

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF NEW MEXICO  
3 UNITED STATES OF AMERICA,  
4                   Plaintiff,  
5           vs.                   NO:   CR-15-4268 JB  
6 ANGEL DELEON, et al.,  
7                   Defendants.  
8                   Transcript of excerpted testimony of  
9                   DAVID CALBERT

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1 THE COURT: All right, Mr. Beck.

2 MR. BECK: The United States calls David  
3 Calbert, Your Honor.

4 THE COURT: All right, Mr. Calbert. If  
5 you'll come up to the witness box, and before you're  
6 seated, Ms. Standridge will swear you in. So if  
7 you'll raise your right hand to the best of your  
8 ability there, Ms. Standridge will swear you in.

9 DAVID CALBERT,  
10 after having been first duly sworn under oath,  
11 was questioned, and testified as follows:

12 THE CLERK: Please be seated, and state  
13 and spell your name for the record.

14 THE WITNESS: David Calbert.

15 THE COURT: Mr. Calbert. Mr. Beck.

16 DIRECT EXAMINATION

17 BY MR. BECK:

18 Q. Mr. Calbert, do you go by any other name?

19 A. Spider.

20 Q. When were you brought into the SNM Gang?

21 A. It would have been about '98.

22 Q. Where were you?

23 A. In Hobbs.

24 Q. How did you come to join the SNM?

25 A. I was just asked to, and I ended up

1 hanging around with these guys and got in by  
2 stabbing some enemy for the S to get in.

3 Q. Is that when you -- or how you earned your  
4 bones?

5 A. Yes.

6 Q. Was that an SNM stabbing?

7 A. Yes.

8 Q. Why?

9 A. Because he was a rival to the S. There  
10 was a little warrant for the white guys. He ended  
11 up going up to Hobbs, and we got him for that.

12 Q. And I think you said you stabbed him?

13 A. Yes.

14 Q. What did you stab him with?

15 A. A shank, a piece of metal from the mop  
16 broom.

17 Q. From the what?

18 A. The mop broom. A piece of metal.

19 Q. Where did you keep that piece of metal?

20 A. In my room, inside my mattress.

21 Q. Did anyone help you with the assault?

22 A. Yes. I don't know his full name. They  
23 called him Utah.

24 Q. Was that because it was an SNM assault?

25 A. Yes.

1 Q. I want to show you a couple of photo, Mr.  
2 Calbert.

3 MR. BECK: Can we bring up what's been  
4 admitted as Exhibit 636?

5 Q. Is that you, Mr. Calbert?

6 A. Yes.

7 Q. Look at 637. Is that you with your  
8 tattoos, Mr. Calbert?

9 A. Yes.

10 Q. Have you gotten tattoos since then?

11 A. Yes.

12 Q. Where did you get those tattoos?

13 A. On my chest, my arms.

14 Q. Where were you located when you got those  
15 tattoos on your chest and your arms?

16 A. In Estancia.

17 Q. Is it allowed to get tattoos in Estancia?  
18 Are you allowed to do that?

19 A. No.

20 MR. BECK: Will you bring up Exhibit 638,  
21 please?

22 Q. What's that tattoo on your neck?

23 A. It's a Zia with an S in it.

24 Q. What does that mean?

25 A. It means I'm part of the syndicate, SNM.

1 Q. Is that the Sindicato de Nuevo Mexico?

2 A. Yes.

3 Q. What about on your chin in that picture?

4 A. That's an S also.

5 Q. Does that also stand for the SNM?

6 A. Yes.

7 Q. And Exhibit 640, please. Is that the same  
8 S tattoo on your neck?

9 A. Yes.

10 Q. Is that a spider web with a spider on your  
11 neck next to it?

12 A. Yes.

13 THE COURT: Mr. Beck, I know we just got  
14 started with Mr. Calbert. But would this be a good  
15 place for us to take our afternoon break?

16 MR. BECK: It would, Your Honor.

17 THE COURT: All right. We'll be in recess  
18 for about 15 minutes. All rise.

19 (The jury left the courtroom.)

20 THE COURT: All right. We'll be in recess  
21 for about 15 minutes.

22 (The Court stood in recess.)

23 THE COURT: All right. We'll go on the  
24 record. I don't think they're Rule 16 statements.

25 So I just don't think it's going to fall within 16

1 or 16-B. So I don't think it's a Rule 16 problem.  
2 But I do want to have -- outside the presence of the  
3 jury, I can rely on inadmissible hearsay to  
4 determine whether Mr. Joe Martinez is a  
5 co-conspirator here, and so I think I'd rather hear  
6 that outside the presence of the jury.

7 So the points I think I'm going to be  
8 looking for is: Is he close, and how he knows that.  
9 I can rely on inadmissible hearsay for that.

10 And I can also -- I think it's a closer  
11 call -- if you were to ask in front of the presence  
12 of the jury, I'd have to think through whether if he  
13 read the materials and knew what was in the  
14 materials whether those would be in furtherance of  
15 the conspiracy or not. I think certainly him  
16 bringing the paperwork is, but those additional  
17 statements might not be co-conspirator statements.  
18 And I'm not sure I see any other hearsay exception.

19 So I think I can rely on those to  
20 determine whether he's a conspirator, but I think I  
21 better hear that testimony outside the presence. So  
22 if you want to ask --

23 MR. BECK: Sure. I think the latter  
24 statement, after -- I think the latter statement may  
25 also be an excited utterance. But we will get

1 there.

2 THE COURT: You're talking about when he  
3 says, "This is nothing," that part?

4 MR. BECK: That statement, and then the  
5 response that "Pup wants it done."

6 THE COURT: But this is nothing -- well,  
7 those are Mr. Calbert's statements. He's here.

8 MR. BECK: "What is this? This is  
9 nothing," are Mr. Calbert's statements, which I  
10 think may be excited utterances or present sense  
11 impressions. Then --

12 THE COURT: I think present sense.

13 MR. BECK: Right. And Mr. Martinez'  
14 response, "Pup wants this done," I think may be an  
15 excited utterance because he gets the impression  
16 that Mr. Calbert is not going to take down the  
17 paperwork, or doesn't want to follow through with  
18 it.

19 THE COURT: I'm not quite persuaded by  
20 that, but I'll think about it. Why don't you go  
21 ahead and ask Mr. Calbert the questions.

22 Mr. Calbert, I'll remind you you're still  
23 under oath.

24 Mr. Beck.

25 BY MR. BECK:



1 Q. Mr. Calbert, the paperwork is important in  
2 an SNM-validated hit; is that right?

3 A. Yes.

4 Q. And you agreed to participate or help with  
5 the Molina murder by taking the Molina paperwork  
6 from the North facility to the South facility; is  
7 that right?

8 A. Yes.

9 MS. DUNCAN: Your Honor, I'd ask that the  
10 Court instruct Mr. Beck not to lead the witness.

11 MR. BECK: I won't lead, Your Honor.

12 THE COURT: All right.

13 BY MR. BECK:

14 Q. Did you read the paperwork?

15 A. Yes.

16 Q. What was it?

17 A. It was just saying that he had called on  
18 something, on a robbery or -- I don't remember  
19 exactly what it was. But it was somewhere along  
20 them lines where he said who did what. And it's  
21 been a while. I don't remember.

22 Q. All right. And you didn't think it was  
23 very significant or --

24 A. Yeah.

25 Q. Did you think it was significant?

1 A. No, it wasn't very significant.

2 Q. Is that statement to law enforcement -- is  
3 that still ratting or snitching?

4 A. Yes.

5 Q. Who provided you the paperwork?

6 A. Cheech.

7 Q. Do you know his real name?

8 A. I don't know his real name. I just know  
9 him by Cheech.

10 Q. And does he know the defendant Anthony Ray  
11 Baca?

12 A. Yes, he told me he did.

13 Q. Does he know him well?

14 A. He says he does.

15 Q. Did he say if they interacted with each  
16 other?

17 A. Yes. At that point he had told me that he  
18 wanted me to send -- that Pup wanted me to send that  
19 down, down South, carry it with me, so...

20 Q. And by giving you the paperwork from Pup,  
21 was Cheech also agreeing and participating to  
22 further the Molina murder?

23 A. Yes.

24 Q. And why is that?

25 A. Because he's making sure that I'm going to

1 take it.

2 Q. And when you said, "This is nothing," what  
3 did he say in response to you?

4 A. That's when he used Pup's name. He told  
5 me he wanted me to do that.

6 Q. Do you know anything else about how close  
7 Cheech and Pup are?

8 A. No. No.

9 Q. You didn't learn anything after this about  
10 how close they are?

11 A. I knew they talked on the phone.

12 Q. How often?

13 A. I'm not sure. I knew from the computer.

14 Q. The tablet?

15 A. The tablet. Yeah. Now, I know.

16 Q. You heard Cheech and Pup talking on  
17 recorded statements on the tablets?

18 A. Yes.

19 MR. BECK: I think that's probably --

20 THE COURT: Why don't you maybe inquire --  
21 one of the things you said up here at the bench was  
22 you might -- that Joe Martinez may have said some  
23 things about he had read the paperwork and knew what  
24 the contents were and those things himself.

25

1 BY MR. BECK:

2 Q. Do you know whether Cheech read the  
3 paperwork and knew the contents of it?

4 A. He didn't tell me he did, but I'm pretty  
5 sure, you know.

6 Q. Why is that?

7 A. Because he told me what it was about,  
8 really. It was paperwork on Molina, and so I  
9 figured he read it.

10 Q. He told you it was paperwork on Molina?

11 A. Yes.

12 Q. What does "paperwork" mean?

13 A. It means him telling.

14 Q. So he basically told you what the document  
15 he was handing you is?

16 A. Yes. He didn't tell me word for word, but  
17 he told me that's what it was.

18 THE COURT: Anything further, Mr. Beck?

19 MR. BECK: That's all, Your Honor.

20 MS. FOX-YOUNG: Your Honor?

21 THE COURT: Let me have Ms. Duncan go  
22 first here.

23 CROSS-EXAMINATION

24 BY MS. DUNCAN:

25 Q. Mr. Calbert, at the time that you say that

1 Cheech gave you the paperwork, you had never met Mr.  
2 Baca at that point; correct?

3 A. No.

4 Q. You'd never seen Mr. Baca interact with  
5 Cheech?

6 A. No.

7 Q. So the only thing that you know about the  
8 relationship between Cheech and Mr. Baca is from  
9 what Cheech told you; correct?

10 A. Yes.

11 Q. And then also from what you've reviewed in  
12 the discovery?

13 A. Yes.

14 Q. And how long have you had your tablet?

15 A. I'd say close to a year altogether,  
16 because they took it away for a while.

17 Q. And how much of the discovery on that  
18 tablet have you reviewed?

19 A. Well, most of it. Most -- my case, really  
20 you know, and some of the other cases.

21 Q. And when you say "my case," what are you  
22 referring to?

23 A. The Paul Silva case.

24 Q. How about the Javier Molina case?

25 A. No, not too much, but I have.

1 Q. You reviewed a call between Cheech and Mr.  
2 Baca; correct?

3 A. Yes.

4 MS. DUNCAN: I have no further questions,  
5 Your Honor.

6 THE COURT: How about you, Ms. Fox-Young?

7 Thank you, Ms. Duncan.

8 MS. FOX-YOUNG: Your Honor, I do, but it's  
9 on the other issue. Just very briefly, I'd ask at  
10 the bench if I could voir dire on that issue, on Mr.  
11 Perez' statement? Just on the time. It's two  
12 questions.

13 THE COURT: Just refresh my memory. What  
14 do you want to do?

15 MS. FOX-YOUNG: I just want to ask him  
16 about the timing of the statement with respect to  
17 the Rule 16 question.

18 THE COURT: Okay. I don't remember the  
19 issue, but go ahead.

20 CROSS-EXAMINATION

21 BY MS. FOX-YOUNG:

22 Q. Mr. Calbert, when did you receive a  
23 Kastigar letter from the Government?

24 A. A what?

25 Q. The Kastigar letter. Do you know what

1 that is?

2 A. No.

3 Q. When did you first sit down with the  
4 Government and talk to them? Was that in the  
5 summer?

6 A. Oh, yeah. It was right after I left  
7 Estancia, right before Estancia closed down. I'm  
8 not sure what month it was.

9 Q. Okay. "Right before" -- how many days  
10 before Estancia closed down?

11 A. I'd say a couple weeks, maybe.

12 Q. And then was it after that that you say  
13 Mr. Perez bragged to you about getting shanks for  
14 the Molina murder?

15 A. It was during that time there in Estancia.

16 Q. So if that happened, did -- are you saying  
17 that Mr. Perez bragged to you before you ever talked  
18 to the Government?

19 A. Yes.

20 MS. FOX-YOUNG: Okay. Thank you, Your  
21 Honor.

22 THE COURT: Thank you, Ms. Fox-Young.

23 Anybody else? Ms. Jacks? Mr. Maynard?  
24 Anybody else?

25 MS. JACKS: No, Your Honor.

1 THE COURT: Do you have anything further,  
2 Mr. Beck?

3 MR. BECK: Yes, Your Honor. I'll point  
4 out that also naming other members in the conspiracy  
5 is an act in furtherance of the conspiracy. So both  
6 Cheech naming Pup -- well, not both. I guess Cheech  
7 naming Pup is an act in furtherance of the  
8 conspiracy, as well.

9 THE COURT: Do you have any further  
10 questions?

11 MR. BECK: No. Sorry, I do not.

12 THE COURT: Well, I think you have  
13 established by a preponderance of the evidence that  
14 Joe Martinez is part of the conspiracy, so I'll  
15 allow these statements.

16 All right, Ms. Standridge, do you want to  
17 bring the jury in?

18 While she's getting the jury, anybody got  
19 anything they need to say to me, want to say to me?  
20 Anything we need to cover?

21 MR. BECK: Getting out by 5:00?

22 THE COURT: No. Sorry. I told you early  
23 on, I have to say "No" a lot; right?

24 MR. BECK: I know. I thought I'd try.

25 MR. LOWRY: Do you have any extra



1 Five-Hour Energy?

2 THE COURT: I haven't had one this week.  
3 Getting good rest. Do you rest better in a trial or  
4 before the trial?

5 MS. JACKS: After.

6 THE COURT: I start sleeping better during  
7 than I did before.

8 MR. JACK: That's because we tire you out.

9 THE COURT: Once you get in the ball game,  
10 it starts getting...

11 MR. JEWKES: Your Honor, are we going to  
12 have a little voucher relief fairly soon? We have  
13 investigators and whatnot that are getting antsy.

14 MR. BECK: Vouchers?

15 MR. JEWKES: Vouchers. CJA vouchers.

16 THE COURT: I don't have a single one on  
17 my desk. I'll talk to you before we leave. The  
18 problem that I had is the Fed Ex I sent here  
19 yesterday has not arrived in Albuquerque. And I  
20 can't remember if it was Wednesday that was full of  
21 vouchers or yesterday. But the package I got today  
22 didn't have any. So every one I have is either in  
23 Albuquerque or en route. I don't have a single one.  
24 I sat up here and got them all paid. The problem  
25 was, I put the Fed Ex slip into today's package

1 before I realized they had it. So I don't have a  
2 way to track. But at the worse, it's going to hit  
3 there Monday. K'Aun is out of town anyway. She's  
4 in Lubbock today and she's probably the one  
5 processing those. But I paid them all.

6 All right. All rise.

7 (The jury entered the courtroom.)

8 THE COURT: All right. Everyone be  
9 seated.

10 On that last point, Mr. Jewkes, they had a  
11 mechanical failure in El Paso with the plane, and so  
12 the packages are in Memphis.

13 MR. JEWKES: They always do, Your Honor.  
14 I have tracked down a Fed Ex package, a couple of  
15 them, from the Court back to Albuquerque.

16 THE COURT: All right, Mr. Calbert, I'll  
17 remind you that you are still under oath.

18 Mr. Beck, if you wish to continue your  
19 direct examination of Mr. Calbert, you may do so at  
20 this time.

21 CONTINUED DIRECT EXAMINATION

22 BY MR. BECK:

23 Q. Mr. Calbert, why were you in Hobbs in  
24 1998?

25 A. That's where they sent me from RDC.

1 Q. What's RDC?

2 A. Like you go to a certain prison to, like,  
3 verify your points and all that stuff, where they  
4 want you to go, medium or minimum or whatever.

5 Q. Okay. Do you know what those three  
6 letters stand for, RDC?

7 A. No.

8 Q. At RDC, it sounds like they decide which  
9 facility they're going to send you to?

10 A. Right.

11 Q. And they sent you to Hobbs?

12 A. Yes.

13 Q. What I meant by my question is: Why were  
14 you sent to prison in 1998?

15 A. Oh, okay. It's for a shooting on the  
16 street.

17 Q. What do you mean, a shooting on the  
18 street? What happened?

19 A. Just shooting from a motor vehicle.

20 Q. What were you shooting at?

21 A. Another person.

22 Q. So is that what I would think of as a  
23 drive-by shooting?

24 A. Yeah, I guess.

25 Q. Were you found guilty, or did you plead

1 guilty to aggravated assault with a deadly weapon?

2 A. Yes, I pled.

3 Q. I want to talk about other crimes that  
4 you've done because it was expected of you as an SNM  
5 member. Did you assault or -- assault somebody in  
6 1998 or 1999?

7 A. Yes.

8 Q. Who was that?

9 A. Nick Olivas.

10 Q. And did you do that because or by virtue  
11 of your membership in the SNM?

12 A. Yes.

13 Q. Was that an SNM-ordered hit?

14 A. Yes.

15 Q. And what did you do to Nick Olivas?

16 A. Just beat him up real bad.

17 Q. How about in 2004? Did you do another SNM  
18 hit in 2004?

19 A. Yes.

20 Q. Who did you hit?

21 A. Bandit. I don't know his full name.

22 Q. Is that Bandit?

23 A. Yes.

24 Q. Sometimes you lean away from the  
25 microphone.

1 A. Okay. All right.

2 Q. Why was that an SNM hit?

3 A. Because he owed money.

4 Q. He owed money for what?

5 A. Drugs.

6 Q. He owed money to the SNM for drugs?

7 A. Yes. Yes.

8 Q. Is that why he was assaulted?

9 A. Yes.

10 Q. Did someone order you to assault him?

11 A. Arturo Garcia.

12 Q. Is Arturo Garcia an SNM member?

13 A. Yes.

14 Q. Now, I want to talk a little bit more

15 about that hit. Where did it happen?

16 A. On that maximum security right there at

17 the North.

18 Q. When you say "the North," is that the

19 North facility at the Penitentiary of New Mexico?

20 A. Yes.

21 Q. In Santa Fe?

22 A. Yes.

23 Q. Is that what is sometimes referred to as

24 the Level 6 facility?

25 A. Yes. Now it is, yes.

1 Q. And where did this happen at the North?

2 A. Right there in 3-B.

3 Q. 3-B -- is that the pod it was in?

4 A. Yeah, the unit. The unit.

5 Q. Did it happen there, or did it happen in  
6 the cages in the yard?

7 A. It happened on the way coming back from  
8 the yard.

9 Q. Tell me about that.

10 A. I just was coming back. I had been  
11 looking for him for a few weeks. And I pulled my  
12 mirror off the wall and we went to the yard. We  
13 were in the yard, and he was coming -- we were  
14 coming back like that. And I got a little ahead of  
15 him and I knew he was coming out of the cage. I  
16 jumped my cuffs, was almost in the front door, and  
17 then I ran back to the yard and I pulled my knife  
18 around my neck with the string to my back so when  
19 they searched me and stuff, I can look like I don't  
20 got no clothes on, and then, like, turn around, I  
21 can swing it around. And that's how I had it. And  
22 I pulled it off and I ran back to the yard, and I  
23 caught him coming out of his cage, and I stabbed  
24 him.

25 Q. There are a couple of things I wanted to

1 go back to there. What did you make the shank out  
2 of?

3 A. It was a piece of a stainless steel mirror  
4 that was on the wall.

5 Q. And how did you -- let me ask this  
6 question. When you're taken out from the Level 6  
7 facility to the cages in the yard, are you searched?

8 A. Yes.

9 Q. Who searches you?

10 A. The COs.

11 Q. And how do they search you?

12 A. They strip search you, take all your  
13 clothes, and turn around, and squat and cough, and  
14 all that.

15 Q. So how did you hide a piece of your metal  
16 mirror when they were having you turn around and  
17 squat and cough?

18 A. I had a piece of string around my neck. I  
19 just tied it to it and held on the back. It was  
20 kind of heavy, so I could -- when they told me to  
21 turn and squat and cough, kind of used the weight of  
22 it. I turned around and put it to the front, and  
23 squat and cough, and they never seen it.

24 Q. Are you allowed to have string in the  
25 Level 6 facility?

1 A. No. I pulled it off my boxers.

2 Q. I think you said you jumped your cuffs.

3 A. Yes.

4 Q. What does that mean?

5 A. I jumped them to the front, like, from my  
6 back. I thought I could just step through them, you  
7 know.

8 Q. So they were behind you, and then you  
9 jumped over them so that they went in front of you?

10 A. Yes, yes.

11 Q. So that stabbing of Gonzalez was in 2004.  
12 Did you do another assault or stabbing for the SNM  
13 in 2004?

14 A. Yes, I had assaulted three COs also.

15 Q. Was that an SNM hit?

16 A. Yeah. It was sanctioned, yes.

17 Q. What do you mean, it was sanctioned?

18 A. I asked if I could, and they gave me the  
19 okay.

20 Q. So if you're going to assault a CO, do you  
21 have to ask permission?

22 A. Yeah. If you're going to assault anybody,  
23 pretty much, you have to.

24 Q. And that's when it becomes an SNM crime?

25 A. Yes.



1 Q. What happened?

2 A. It all started over the phone, you know  
3 what I mean? An argument for the phone and they  
4 started messing with me, and --

5 Q. Who is "they"?

6 A. Just the COs that work in there. That  
7 Amanda, I guess her name was.

8 Q. Don't say any names. Let's just say the  
9 COs.

10 A. Okay.

11 Q. So how did they start messing with you?

12 A. Because I was sticking up for one of my  
13 brothers, you know.

14 Q. One of your brothers? You mean one of  
15 your SNM members?

16 A. Yes, yes.

17 Q. And what happened?

18 A. Then they just took their focus onto me  
19 and I ended up getting a shampoo bottle full of  
20 feces and stuff and I threw it on them, threw it on  
21 her, and she went and got the lieutenant and got him  
22 involved.

23 And it just got out of hand from there.  
24 And they started just messing with me, so I went and  
25 I asked Arturo and Juanito, you know what I mean,

1 these cops are messing with us, to see if I could  
2 get the okay to do something. And they told me  
3 yeah.

4 So I went and got a knife, and when they  
5 opened the door, they went to go take me and put me  
6 in the strip cell, because I was going to protest  
7 and stuff. They came over there and I had put my  
8 knife on the sink and then when they opened the door  
9 halfway, I jumped them again, and I came out. And I  
10 ended up stabbing two of the COs, and the other one  
11 just took off, and that was about it right there.

12 Q. Was anyone else involved in this stabbing  
13 with you?

14 A. No, because it was -- like I said, it was  
15 segregation. So I kind of had to come out -- you  
16 know what I mean, they only open one door at a time.  
17 But I was already there on a three-man escort from  
18 the assault previously. So that's why it was three  
19 COs there.

20 Q. And then did you commit another crime in  
21 prison in 2011 by virtue of your SNM membership?

22 A. Yes.

23 Q. What was that?

24 A. I assaulted Paul Silva.

25 Q. Did you stab Paul Silva?

1 A. Yes.

2 Q. Did you stab him a lot of times?

3 A. Yes.

4 Q. Where did this happen?

5 A. In the South, right there in Santa Fe at  
6 Southern.

7 Q. The South facility at PNM in Santa Fe?

8 A. Yes.

9 Q. Did it happen in the rec yard?

10 A. Yes.

11 Q. And why did you stab Paul Silva?

12 A. Just over politics, you know. We just  
13 weren't looking eye to eye on a lot of things, and  
14 things got out of hand, disrespect, and it became a  
15 personal thing. And out of all that, I ended up  
16 having enough, stabbing him in the yard.

17 Q. So how is it a personal thing if it's  
18 still for the SNM?

19 A. Because a lot of people didn't like what I  
20 did, you know. I didn't really go ask, you know. I  
21 just really did it. But it was over a lot of things  
22 we weren't seeing eye to eye about, you know, so...

23 Q. I think you said politics. What were the  
24 things you didn't see eye to eye on?

25 A. This dude was running the pod and he was

1 coming over there to do certain things, having  
2 everybody -- I mean, who was really running the pod,  
3 you know what I mean? That was the big thing about  
4 it. I kind of didn't want nobody running it until  
5 we got to where we were going, where Pup was at, so  
6 he could -- you know what I mean? Even everything  
7 out. Because everything was in chaos, so I just  
8 wanted to get down over there so we could get  
9 everything straight and get everything together like  
10 it's supposed to be, and he wasn't hearing it, you  
11 know.

12 Q. So did Paul Silva try to assert leadership  
13 in the pod when he came in?

14 A. Yes, yes.

15 Q. And did you disagree with that?

16 A. Yes, I disagreed. I didn't want nobody  
17 running nothing there, you know.

18 Q. And I think you said once you get down to  
19 where Pup is -- is Pup the defendant Anthony Ray  
20 Baca behind me?

21 A. Yes.

22 Q. And is that the person in the back  
23 right-hand side of the room?

24 A. Yes.

25 Q. What is he wearing?

1           A.    A blue suit, black suit. I can't see that  
2 far.

3                   MR. BECK: Let the record reflect Mr.  
4 Calbert indicated the defendant Anthony Ray Baca.

5                   THE COURT: The record will so reflect.  
6 BY MR. BECK:

7           Q.    Why did you want to wait to go where Pup  
8 was going to determine a leader?

9           A.    Because the way the politics was, Arturo  
10 had the keys there; he was making a mess of  
11 everything, had everybody fighting, and there wasn't  
12 no hope with them politics that were going around.  
13 So I wanted, you know what I mean, to get somebody a  
14 little bit smarter to put things together before I  
15 fell in line, you know?

16           Q.    So you were looking at Mr. Baca as that  
17 person who would put things together?

18           A.    Yes.

19           Q.    Did you expect him to pick a leader of the  
20 pod?

21           A.    Well, we had already been over there in  
22 Las Cruces, or over here in Las Cruces, so we  
23 wouldn't have needed a leader because he would have  
24 been it.

25           Q.    He would have been the leader?

1 A. Yes.

2 Q. Who else stabbed Paul Silva with you?

3 A. Mauricio Varela.

4 Q. Now, if there were documents in your  
5 prison file in which you said, "I'm not an SNM Gang  
6 member; I'm done with those guys," you said this in  
7 2009, why is that?

8 A. Because it's required of us to not talk to  
9 law enforcement about anything, validation or  
10 anything like that, because for fear of your life,  
11 you know what I mean, if anything gets out.

12 Q. So that's a rule required by the SNM, not  
13 to talk to correction officers?

14 A. Yes.

15 Q. So is that why those documents say that  
16 you said you're not an SNM member?

17 A. Yes.

18 Q. Were you an SNM member in 2008?

19 A. Yes.

20 Q. Were you an SNM member in 2009?

21 A. Yes.

22 Q. Were you an SNM member in 2017?

23 A. Yes.

24 Q. I'm going to show you what's been marked  
25 for admission, Government's Exhibits 692 and 693.

1 MR. BECK: May I approach the witness?

2 THE COURT: You may.

3 BY MR. BECK:

4 Q. Do you recognize those documents I just  
5 handed you, Mr. Calbert?

6 A. Yes.

7 Q. Is that your plea agreement and addendum?

8 A. Yes.

9 MR. BECK: Your Honor, at this time the  
10 United States moves into admission documents 629 and  
11 693.

12 THE COURT: Any objection from the  
13 defendants?

14 MS. JACKS: No objection.

15 MS. DUNCAN: No, Your Honor.

16 MS. BHALLA: No objection.

17 THE COURT: Government's Exhibits 692 and  
18 693 will be admitted into evidence.

19 (Government Exhibit 692 and 693 admitted.)

20 MR. BECK: Bring up 692.

21 BY MR. BECK:

22 Q. What is this document, Mr. Calbert?

23 A. It's my plea agreement, what I pled guilty  
24 to.

25 Q. And did you plead guilty on September 28,

1 2017?

2 A. Yes.

3 Q. Did you plead guilty to all the charges  
4 that the federal government filed against you?

5 A. Yes.

6 Q. Document 693, please.

7 Focus in on the top -- the bottom  
8 paragraph. Is this the addendum to your plea  
9 agreement?

10 A. Yes.

11 Q. And what do you understand this document  
12 to mean?

13 A. That I pled guilty to both counts and that  
14 I'm facing up to 30 years, and --

15 Q. Let me ask you this question, Mr. Calbert.  
16 Do you expect to receive some benefit from the  
17 federal government for testifying here today?

18 A. Yeah, I would think so, you know.

19 Q. What do you have to do?

20 A. To testify and whatever they need me to  
21 do, you know. Tell the truth.

22 Q. All right. Why did you decide to  
23 cooperate in 2017?

24 A. Because I just got tired of attempts on my  
25 life, you know. This last time was the last straw,



1 you know.

2 Q. What happened the last time?

3 A. They said they came up, but some bogus  
4 paperwork that -- I don't know where they got it  
5 from or what, but they said they had some paperwork.  
6 So it was either, I'm going to have to keep going  
7 and killing and doing all this, digging myself a  
8 hole where I'm never going to climb out of it; or  
9 this. You know what I mean? So there wasn't  
10 nothing worth fighting for anymore, you know. I  
11 just decided to get out.

12 Q. When you say they had paperwork and they  
13 made an attempt on your life, are you referring to  
14 other SNM members?

15 A. Yes.

16 Q. And by "paperwork," do you mean, as we  
17 discussed earlier, a document where you cooperated  
18 with law enforcement?

19 A. Yes, yes.

20 Q. Did that paperwork exist?

21 A. Somebody must have typed it up, but like I  
22 said, I've never done anything like that until right  
23 now.

24 Q. Have you already received some benefits?

25 A. Yes.

1 Q. You began cooperating in August of last  
2 year. Does that sound right? August of 2017?

3 A. Yes. I'm bad on dates. But yeah, that  
4 sounds...

5 Q. Were you provided lunch that day from  
6 Blake's Lotaburger?

7 A. Yes.

8 Q. Did you -- and up to this point, have you  
9 received about \$408.05 in benefits from the  
10 Government?

11 A. Yes, about.

12 MS. DUNCAN: Your Honor, we object to this  
13 leading. He can ask the witness what benefits he  
14 received without telling him what they are.

15 MR. BECK: I can do that, Your Honor.

16 THE COURT: All right.

17 BY MR. BECK:

18 Q. What other benefits have you been provided  
19 because of your cooperation?

20 A. I just got to go to a better spot. You  
21 know what I mean? I get my TV and my radio and  
22 stuff like that. More canteen, more calls, you  
23 know. That money, like I said.

24 Q. Did you also get a visit with a family  
25 member?

1 A. That's right. I got a visit with my  
2 people.

3 Q. How many visits with your people did you  
4 get?

5 A. Just one.

6 Q. Now, before you cooperated that day, did  
7 you meet with another SNM member, Lupe Urquizo?

8 A. Yes, yes.

9 Q. And were his attorneys there?

10 A. Yes, he was there. She was there.

11 Q. And did you -- and you met with them  
12 before you met with Special Agent Acee; is that  
13 right?

14 A. Yes, yes.

15 Q. Did y'all talk about this case?

16 A. Yeah. Well, pretty much, just like trying  
17 to --

18 Q. Without telling me what you said.

19 A. Yes, we talked a bit about it, yes.

20 Q. Then afterwards, did you talk to Special  
21 Agent Acee?

22 A. Yes.

23 Q. And did you tell Special Agent Acee -- I  
24 won't ask you that question.

25 I want to talk to you about 2014. Where

1 were you in the beginning of 2014?

2 A. Like I said, I'm bad with dates. 2014, I  
3 think I was at the South. I'm not sure.

4 Q. At some point -- are you talking about the  
5 South facility at PNM?

6 A. Yes. In Santa Fe, yes.

7 Q. Prior to that, at some point, were you at  
8 the North facility?

9 A. Yes.

10 Q. Were you there after the Paul Silva  
11 stabbing?

12 A. Yes, over there.

13 Q. At some point in the rec yard did you have  
14 a conversation with a man named Cheech?

15 A. Yes. Yes.

16 Q. What happened?

17 A. Nothing. He just said that like --

18 Q. Hold on one second.

19 MS. DUNCAN: Your Honor, I have an  
20 objection as to hearsay.

21 THE COURT: Well, let's see what the  
22 question is going to be, Mr. Beck.

23 MR. BECK: Sure.

24 BY MR. BECK:

25 Q. Were you provided the paperwork on Javier

1 Molina?

2 A. Yes, yes.

3 Q. Were you provided that paperwork from  
4 Cheech?

5 A. Yes. Yes.

6 Q. And what did the -- what was the Molina  
7 paperwork, as I'm referring to it?

8 A. Just that he told on some robbery. He  
9 robbed some old lady, and he was telling on the  
10 people who were with him, who did what. And it was  
11 just a real quick sentence. It wasn't nothing,  
12 like, fantastic, you know. It was paperwork.

13 Q. Was it a letter? Was it --

14 A. It was a document from the police, like a  
15 statement.

16 Q. Was it a police report?

17 A. Yeah. It was a police report that he  
18 made, you know.

19 Q. And what happens when an SNM member has a  
20 statement come out against someone else in a law  
21 enforcement report?

22 A. Well, the person who did it, they got a  
23 hit on their life, you know.

24 Q. Is that also referred to as a green light?

25 A. Yes.

1 Q. And with this paperwork, did you agree to  
2 take it and pass it to someone else?

3 A. Yes. Yes.

4 Q. And was Javier Molina ultimately murdered?

5 A. Yes.

6 Q. So you participated in the agreement to  
7 make sure that Javier Molina got murdered?

8 A. Yes.

9 Q. And Cheech did -- I think you said Cheech  
10 provided you the paperwork?

11 A. Yes.

12 Q. Did he tell you what it was?

13 A. Yes.

14 MR. BECK: Your Honor, I'm about to get  
15 into the statement. Do we need to approach?

16 THE COURT: Well, I'll overrule the  
17 objection. Go ahead.

18 BY MR. BECK:

19 Q. When you were outside in the yards with  
20 Cheech, how did he give you this paperwork on Javier  
21 Molina?

22 A. He took it out there and just rolled it up  
23 tight so it could fit through the holes in the cage,  
24 and he just handed it to me like that when I passed,  
25 you know?

1 Q. I'm going to give you what's been admitted  
2 as Government's Exhibit 693.

3 MR. BECK: May I approach the witness,  
4 Your Honor?

5 THE COURT: You may.

6 BY MR. BECK:

7 Q. If you can with those cuffs on, will you  
8 show me how he rolled up the paperwork when he  
9 passed it to you?

10 A. Just like that, small, so it will fit  
11 through the holes in the cages.

12 Q. So you both were in cages? Was he in the  
13 cage next to you?

14 A. Yeah, yes.

15 MR. BECK: May I approach, Your Honor?

16 THE COURT: You may.

17 BY MR. BECK:

18 Q. He passed it through the cage? Did he say  
19 anything about the paperwork?

20 A. He just said that he was telling, and that  
21 was it. He really didn't tell me exactly word for  
22 word. He just summed it up and said that they  
23 wanted me to take it down there at first. And I  
24 told him, "No, this ain't even nothing."

25 And then when he threw Pup's name in

1 there, he said, "Yeah, Pup wants you to take it down  
2 there."

3 Q. He said, "Pup wants you to take it down  
4 there?" Is that Mr. Baca?

5 A. Yes.

6 Q. And what did you understand Mr. Cheech to  
7 mean?

8 A. To take the paperwork down there?

9 Q. Yes. What did you understand that he  
10 meant?

11 A. That pretty much, I was required to carry  
12 the paperwork to make sure I get it over there to  
13 Southern facility and over here.

14 Q. So did you take that paperwork after that  
15 from the North facility to the South facility?

16 A. Yes. Yes.

17 Q. And what did you do with that paperwork  
18 once you were at the South facility?

19 A. I gave it to Lupe Urquizo. He asked for  
20 it, and I gave it to him.

21 Q. Just for the record, do you know Cheech's  
22 real name?

23 A. I don't.

24 Q. Is he an SNM member?

25 A. Yes.



1 Q. After you were arrested by the federal  
2 government for the case you pled guilty to, were you  
3 incarcerated with -- let me ask that a different  
4 way. After you were arrested for this case, did you  
5 have a discussion with the defendant Rudy Perez?

6 A. After, yes. Yes.

7 Q. And is that Rudy Perez -- is he in the  
8 courtroom today?

9 MS. DUNCAN: Your Honor, we'll stipulate.

10 THE COURT: Is that satisfactory?

11 MR. BECK: That's satisfactory, Your  
12 Honor.

13 THE COURT: Mr. Beck.

14 BY MR. BECK:

15 Q. Where did the discussion with Mr. Perez  
16 happen?

17 A. In the shower. In the shower.

18 Q. That's good. In the shower. And what did  
19 Mr. Perez tell you?

20 A. He just said that, man, out there -- he's  
21 trying to make a joke, you know what I mean? I  
22 wanted credit for all this that went on, you know  
23 what I mean, at first. He said, well, after all  
24 this came down, he said no, I don't want nothing to  
25 do with it after all.

1 Q. So at first --

2 MS. DUNCAN: Your Honor, could we have a  
3 limiting instruction as to this testimony?

4 MS. JACKS: I would join.

5 THE COURT: It appears Mr. Calbert is  
6 testifying to statements that Mr. Perez made to him.  
7 You can only use these statements in deciding the  
8 charges against Mr. Perez. You cannot use this  
9 evidence in any way in your deliberations as to the  
10 other three defendants.

11 All right, Mr. Beck.

12 BY MR. BECK:

13 Q. He told you he wanted to take credit for  
14 this?

15 A. Yeah, because he was crippled and can't  
16 get around, so I guess he wanted to do something.

17 Q. What do you mean, he wanted to do  
18 something?

19 A. To, like, put in and say, "I did  
20 something, I put in," you know what I mean? A piece  
21 of metal or whatever, you know, from his walker.

22 Q. So you understood him to mean he'd get  
23 credit for putting in a piece of his walker?

24 A. Yes. Yes.

25 Q. Now, earlier you said -- you testified

1 about crimes you did for the SNM.

2 A. Yes.

3 Q. Have you ever heard of putting in work?

4 A. Yes.

5 Q. What does that mean?

6 A. Just either assaulting somebody or  
7 stabbing somebody, killing somebody for the cause,  
8 for the SNM.

9 Q. What did you understand Mr. Molina -- or  
10 excuse me. What did you understand Mr. Perez to  
11 mean when he said he wanted to get credit for his  
12 walker?

13 A. I took it that he just wanted to be part  
14 of the thing that happened, the murder. And I just  
15 felt he wanted to be part of it, you know, because  
16 he can't do nothing else. He can't fight or -- like  
17 I said, he's in a walker, a wheelchair. I think he  
18 just wanted to put in something, you know, to be  
19 part of the team.

20 MR. BECK: May I have a moment, Your  
21 Honor?

22 THE COURT: You may.

23 BY MR. BECK:

24 Q. A couple more questions for you. When you  
25 met with Special Agent Acee and agreed to cooperate,

1 we talked about how you met with Lupe Urquizo and  
2 your attorneys before that?

3 A. Yes. Yes.

4 Q. How long was the meeting? Was it a short  
5 meeting or a long meeting?

6 A. It wasn't very long. Maybe five minute or  
7 something.

8 Q. You said when you went down to the South  
9 facility at PNM, you gave Lupe Urquizo the  
10 paperwork. Do you remember that?

11 A. Yes.

12 Q. Why did you give him the paperwork?

13 A. So he could take it down. Because he was  
14 going before I was. I had just arrived there. And  
15 I gave it to him so he could take it. They asked  
16 for it, really, you know, so I gave it to him. They  
17 were going that day. So they were on that bus.  
18 They would have got down there faster, you know.

19 Q. So Lupe Urquizo asked you for the  
20 paperwork?

21 A. Yes.

22 Q. Did he know what it was?

23 A. Yes.

24 Q. And when you say "going down there," where  
25 was he going?

1           A.     Well, down here to Cruces. To Las Cruces,  
2 to the prison.

3           Q.     Is that the Southern New Mexico  
4 Correctional Facility?

5           A.     Yes.

6           Q.     Was Javier Molina incarcerated at the  
7 Southern New Mexico Correctional Facility then?

8           A.     Yes.

9           Q.     Is Lupe Urquizo an SNM member?

10          A.     Yes.

11          Q.     So you handed Lupe Urquizo the paperwork  
12 and said they were going down. Who is "they"?

13          A.     Mauricio Varela, Lupe. And I think that's  
14 all that went on that bus at that time. It was just  
15 them.

16          Q.     Is Mauricio Varela also an SNM member?

17          A.     Yes.

18                 MR. BECK: Pass the witness, Your Honor.

19                 THE COURT: Thank you, Mr. Beck.

20                 Ms. Duncan, do you wish to cross-examine  
21 Mr. Calbert?

22                 MS. DUNCAN: Yes, Your Honor.

23                 THE COURT: Ms. Duncan.

24

25

1 FURTHER CROSS-EXAMINATION

2 BY MS. DUNCAN:

3 Q. Mr. Calbert, when did the conversation  
4 with Cheech happen?

5 A. It was right after the Silva case, what  
6 happened with Silva. And they had put me in 1-B,  
7 away from everybody. And I don't know what year it  
8 was. Like I said, I'm real bad with dates and  
9 things like that.

10 Q. How long was it between the time of that  
11 conversation with Cheech and you moving to South?

12 A. I would say maybe within that four to five  
13 months.

14 Q. You've never -- at that point you had  
15 never met Mr. Baca; correct?

16 A. No.

17 Q. You had never had a conversation with him?

18 A. No.

19 Q. The recreation yard at PNM North, the  
20 cells are -- the rec yards are separated by -- they  
21 have gaps between the walls; correct?

22 A. Yes. Yes.

23 Q. How far apart are those recreation cells?

24 A. They're a little far away, about arm's  
25 length.

1 Q. And you and Cheech were not in the same  
2 pod; correct?

3 A. No.

4 Q. And you've never been in the same pod as  
5 Cheech?

6 A. No. No.

7 Q. When is the first time you met him?

8 A. A long time. I've known him for years.

9 Q. Where did you meet him?

10 A. I think it was in Las Cruces, over here in  
11 the prison.

12 Q. You talked to Mr. Beck a little bit about  
13 your criminal history, and I'd like to talk some  
14 more about it. Your first conviction was in 1995  
15 for possession of a controlled substance; correct?

16 A. Yes.

17 Q. Possession of methamphetamine?

18 A. Yes.

19 Q. And then your second conviction was in  
20 1998, aggravated assault with a deadly weapon;  
21 correct?

22 A. Yes.

23 Q. And that was the drive-by shooting you  
24 mentioned?

25 A. Yes.

1 Q. Who was in the car that you shot at?

2 A. Adam Smith and Jared Smith.

3 Q. Who are Adam and Jared Smith?

4 A. Just some guys from where I'm from.

5 Q. And why did you shoot at them?

6 A. They tried to run over my little brother.

7 Q. Were either of them injured?

8 A. No.

9 Q. And you were also charged with possession  
10 of a firearm by a felon; correct?

11 A. Yes.

12 Q. And this was based on your prior  
13 conviction for possession of methamphetamine?

14 A. Yes.

15 Q. Next you were convicted in 2006 of  
16 aggravated battery; correct?

17 A. Yes.

18 Q. And what were the circumstances of that  
19 offense?

20 A. That was on the sheet; right?

21 Q. You tell me.

22 A. Well, I don't -- I think it was the same  
23 guys, Adam and Jared Smith. I think that's the one  
24 I got caught for.

25 Q. And in -- I skipped one. In 1999, you



1 were convicted of possession of a weapon by a  
2 prisoner; correct?

3 A. Yes. That was in prison.

4 Q. What facility were you in when you --

5 A. In Las Cruces.

6 Q. And then you were convicted again in 2008  
7 for the offense you described happening in 2004;  
8 correct?

9 A. Yes.

10 Q. And in 2004, first you assaulted Anthony  
11 Gonzalez; correct?

12 A. Yes.

13 Q. And I can't remember what name you called  
14 him?

15 A. Bandit.

16 Q. Bandit. Okay. So I think you talked  
17 about you were being escorted from the rec yard, and  
18 Bandit was being escorted to the rec yard; correct?

19 A. Yes.

20 Q. And you were being escorted by a  
21 correctional officer?

22 A. Yes.

23 Q. And you escaped that correctional officer?

24 A. Yes.

25 Q. And then jumped your cuffs, meaning you

1 brought your cuffs from the back to the front?

2 A. Right.

3 Q. Grabbed a shank and then stabbed Bandit;  
4 correct?

5 A. Yes.

6 Q. How many times did you stab Bandit?

7 A. Maybe three. I think about three or  
8 something like that.

9 Q. And where on his body did you stab him?

10 A. His neck.

11 Q. One of the COs tried to intervene as you  
12 were stabbing Bandit; correct?

13 A. Yes.

14 Q. And ended up pushing him into the fence to  
15 protect him?

16 A. Yes.

17 Q. You ultimately were found guilty of  
18 aggravated battery on those COs as well as  
19 aggravated battery on Bandit; correct?

20 A. Yes, I pled.

21 Q. And then you were on prehearing detention  
22 for that offense when you attacked the correctional  
23 officers; right?

24 A. Yes.

25 Q. And so from your testimony it sounds like

1 you wanted to attack the COs for personal reasons,  
2 but had to get permission; is that right?

3 A. No. Because I was sticking up for my  
4 brothers. Like I said, it started with Lupe, you  
5 know.

6 Q. Lupe Urquizo? You were sticking up for  
7 Lupe Urquizo?

8 A. Yes.

9 Q. The person who you met with before you met  
10 with the FBI?

11 A. Yes.

12 Q. And you actually served as a personal  
13 representative for Mr. Urquizo when he had picked up  
14 a disciplinary charge; correct?

15 A. Yes.

16 Q. Had you done that only once or on more  
17 occasions?

18 A. I think it was just that one time.

19 Q. And I think you testified that you were  
20 sticking up for him and then later they disrespected  
21 you; correct?

22 A. Yes. They turned their attention to me.

23 Q. So the officers came to your cell and  
24 asked you to cuff up; correct?

25 A. Yes.

1 Q. And you put your hands through the food  
2 port for them to put the cuffs on behind you?

3 A. Yes.

4 Q. And then as they opened the door, you once  
5 again pulled your hands from your back to your  
6 front?

7 A. Yes.

8 Q. And in addition to being known as Spider,  
9 you're also known as Houdini; is that correct?

10 A. That's what they said in the paper, yeah.

11 Q. Then after you pulled your hands to the  
12 front, you had a shank in your hand; correct?

13 A. Yes.

14 Q. And you chased Lieutenant Allen around the  
15 pod with that shank?

16 A. Yes.

17 Q. And you stabbed him?

18 A. Yes.

19 Q. And then you turned your attention to a  
20 Sergeant Gould; correct?

21 A. Yes.

22 Q. Chased him around the pod, as well, and  
23 stabbed him?

24 A. Yes.

25 Q. And for that you were convicted of

1 multiple counts of aggravated assault on a peace  
2 officer, aggravated battery with a deadly weapon,  
3 and possession of a deadly weapon by a prisoner;  
4 correct?

5 A. Yes.

6 Q. And your sentences were enhanced because  
7 you had been convicted of previous felonies;  
8 correct?

9 A. Yes.

10 Q. And then in this case you were charged  
11 with the attack on Paul Silva; correct?

12 A. Yes.

13 Q. And that was about a power struggle  
14 between you and Mr. Silva; correct?

15 A. Yeah. Yes.

16 Q. And in that case, you and Mauricio Varela  
17 attacked Mr. Silva in the rec yard; correct?

18 A. Yes.

19 Q. You stabbed Mr. Silva multiple times?

20 A. Yes.

21 Q. And Mr. Varela kicked him in the head?

22 A. Yes.

23 MS. DUNCAN: Your Honor, at this place I'd  
24 like to --

25 Q. You're aware that the attack on Mr. Silva

1 was videotaped; correct?

2 A. Yes.

3 Q. And you've seen that videotape?

4 A. Yes.

5 Q. And that accurately reflects the attack  
6 that you committed on Mr. Silva?

7 A. Yes, yes.

8 MS. DUNCAN: Your Honor, that video is  
9 Defense Exhibit PS, and we would move to admit it at  
10 this time.

11 MR. BECK: No objection, Your Honor.

12 THE COURT: All right. Any objection from  
13 the other defendants? Not hearing any --

14 MS. FOX-YOUNG: No, Your Honor.

15 MS. BHALLA: No, Your Honor.

16 THE COURT: All right. Defendant's  
17 Exhibit PS will be admitted into evidence.

18 (Defendants' Exhibit PS admitted.)

19 MS. DUNCAN: If we could play that?

20 Your Honor, that video was produced in  
21 discovery and we're going to try to play it without  
22 the sound track. If we could pause it, please,  
23 here. Take it back.

24 BY MS. DUNCAN:

25 Q. So looking at the screen, can you tell us

1 which -- where are you in this video? I apologize.

2 The counter number is 6:5:21:781.

3 A. I'm the one on the right.

4 Q. And who is -- and do you have anything --  
5 you have a shank in your hand; correct?

6 A. Yes.

7 Q. And the person on the left is Mauricio  
8 Varela?

9 A. Yes.

10 MS. DUNCAN: If you can continue the  
11 video, please.

12 (Video clip played.)

13 Q. How many times did you stab Mr. Silva?

14 A. They told me 14.

15 Q. And he was hospitalized for those  
16 injuries; correct?

17 A. Yes.

18 Q. You pled guilty to two offenses related to  
19 your attack on Mr. Silva; correct?

20 A. Yes.

21 Q. One was conspiracy to murder him?

22 A. Yes.

23 Q. And the other was assaulting him with a  
24 dangerous weapon?

25 A. Yes.

1 Q. And for those two offenses you face a  
2 maximum sentence of 30 years?

3 A. Yes. Yes.

4 Q. And you talked with Mr. Beck about an  
5 addendum to your plea agreement where you agreed to  
6 cooperate with the Government in this case; correct?

7 A. Yes.

8 Q. And you're expecting a reduced sentence as  
9 a result of that cooperation?

10 A. I would think, yes.

11 Q. And in that addendum you understand that  
12 it's up to the Government, the people here, to  
13 request that reduced sentence; correct?

14 A. Yes.

15 Q. And they don't have to; they only -- it's  
16 completely up to them?

17 A. Yes.

18 Q. You're not charged with conspiracy to kill  
19 Javier Molina; correct?

20 A. No.

21 Q. They didn't bring any charges against you?

22 A. No, no.

23 Q. Or with the murder itself?

24 A. No.

25 Q. Although you admit that you gave the



1 paperwork to Lupe Urquizo, understanding that it  
2 would be used to authorize a hit; correct?

3 A. Yes.

4 Q. Now, in 2014 you filed a lawsuit against  
5 Gregg Marcantel; correct?

6 A. Yes.

7 Q. And it was a lawsuit complaining about the  
8 way the Department of Corrections was treating you  
9 and others in the wake of the Javier Molina murder?

10 A. Yes.

11 Q. And you were complaining because -- that  
12 you had been locked down following that murder;  
13 correct?

14 A. Yes.

15 Q. And had lost some of your privileges?

16 A. Yes.

17 Q. You'd been stripped of your property;  
18 you'd lost visits with your family?

19 A. Yes.

20 Q. Lost phone calls?

21 A. Yes.

22 Q. Lost commissary?

23 A. Yes.

24 Q. And you were in segregation?

25 A. Right.

1 Q. And so you -- in filing the lawsuit, you  
2 were seeking a change in your conditions; correct?

3 A. Right.

4 Q. You wanted more phone calls?

5 A. Yes.

6 Q. More visits?

7 A. Yes.

8 Q. More showers?

9 A. Yes.

10 Q. And you also sought monetary damages. You  
11 were seeking \$1,000 a day for every day that you  
12 were held in those conditions; correct?

13 A. Yes.

14 Q. And you signed that complaint before you  
15 filed it; correct?

16 A. Yes.

17 Q. You signed it under penalty of perjury;  
18 right?

19 A. Yes.

20 Q. And you signed saying you had reviewed  
21 that complaint and everything in it was true --

22 A. Yes.

23 Q. -- and correct to the best of your  
24 ability?

25 A. Yes.

1 Q. And then you filed it with the Court?

2 A. Yes.

3 Q. A Court much like this one?

4 A. Yes.

5 Q. And in that complaint you asserted, "This  
6 plaintiff" -- that would be you; correct? You were  
7 the plaintiff in that lawsuit?

8 A. Right.

9 Q. "This plaintiff had no involvement in any  
10 crime or disciplinary infraction with the murder  
11 that took place at the Southern New Mexico  
12 Correctional Facility on March 7, 2014"; correct?

13 A. Yes.

14 Q. And that would have been the murder of  
15 Javier Molina?

16 A. Yes.

17 Q. So you swore under oath that you had no  
18 involvement with the murder of Javier Molina;  
19 correct?

20 A. Yes, but that didn't go through. I never  
21 came of nothing because I didn't do it right.

22 Q. But you nonetheless swore under oath that  
23 you had nothing to do with it --

24 A. Yeah.

25 Q. -- in an effort to improve your

1 conditions.

2 A. Okay. Yes.

3 Q. Correct? And win some monetary damages?

4 A. Yes.

5 MS. DUNCAN: Your Honor, if I could have a  
6 moment?

7 THE COURT: You may.

8 BY MS. DUNCAN:

9 Q. Actually, Mr. Calbert, when is your parole  
10 date?

11 A. It's already passed. It was March '15,  
12 but I'm doing parole right now in-house.

13 THE COURT: Ms. Duncan, would you clear up  
14 the last word that he just said? Did he say  
15 "hospital"?

16 Q. You were talking about being on parole?  
17 You're on parole right now?

18 A. I'm doing in-house parole right now.

19 Q. In-house parole. And you're being  
20 detained in this case until sentencing; correct?

21 A. Right.

22 Q. The sentence for which you're going to  
23 face 30 years?

24 A. Yes.

25 MS. DUNCAN: I have no further questions,

1 Your Honor.

2 THE COURT: Thank you, Ms. Duncan.

3 Ms. Fox-Young, do you wish to  
4 cross-examine Mr. Calbert?

5 MS. FOX-YOUNG: Yes, Your Honor.

6 CONTINUED CROSS-EXAMINATION

7 BY MS. FOX-YOUNG:

8 Q. Mr. Calbert, you know you're under oath  
9 today?

10 A. Yes.

11 Q. And I think you testified a few minutes  
12 ago that attack when you tried to kill Paul Silva --

13 A. Yes.

14 Q. -- that that was ordered by the SNM?

15 A. No, it wasn't.

16 Q. You told the Government that -- there was  
17 just a certain way that Mr. Beck asked you, wasn't  
18 this really done for the SNM? And you said, yeah,  
19 you were trying to curry favor, so it was for the  
20 SNM; is that right?

21 A. In a way it was. In a way it wasn't.

22 Q. In a way it wasn't, because actually, you  
23 told the Government last August that it wasn't  
24 sanctioned by the SNM leadership; right? It had  
25 nothing do with the SNM; isn't that right?

1 A. It did and it didn't, like I said.

2 Q. Did you or did you not tell the Government  
3 last August that it wasn't sanctioned?

4 A. Oh, yeah.

5 Q. That's right. And you've been asked about  
6 some other situations where you decided to kill  
7 people; right?

8 A. Excuse me? Say it again.

9 Q. You've been asked about some other  
10 circumstances, some other past convictions where you  
11 made the decision to kill people.

12 A. No.

13 Q. No?

14 A. No.

15 Q. Well, let's talk about -- was it Mr.  
16 Gonzalez, a gentleman that you sent to the hospital  
17 in Santa Fe?

18 A. Okay.

19 Q. Was that Mr. Gonzalez?

20 A. Yes.

21 Q. And that was in 2004; right?

22 A. Yes.

23 Q. And in that case, you made a shank and you  
24 attacked Anthony Gonzalez. Several times you struck  
25 him in the neck and the body; is that right?

1 A. Yes.

2 Q. And it was only when you were sprayed with  
3 some chemical agents that you stopped attacking him;  
4 right?

5 A. No, they didn't spray me. No.

6 Q. Did they release some chemical agents into  
7 the air?

8 A. Not that time.

9 Q. Not that time? A different time?

10 A. Yes.

11 MS. FOX-YOUNG: Your Honor, may I approach  
12 the witness?

13 THE COURT: You may.

14 BY MS. FOX-YOUNG:

15 Q. Do you recognize this picture?

16 A. Yes.

17 Q. Will you tell me what it is?

18 A. It's a hole in Anthony's, whatever,  
19 Gonzalez's neck.

20 Q. It's a hole in his neck that you made?

21 A. Yes.

22 MS. FOX-YOUNG: Your Honor, I'd like to  
23 mark this as Exhibit EN.

24 THE COURT: Before you turn it on, why  
25 don't we see it?

1 MR. BECK: No objection.

2 MS. FOX-YOUNG: I'm sorry, Judge. I  
3 shared it with the Government.

4 THE COURT: Anybody else have any  
5 objection? Not hearing any, Defendant's Exhibit EN  
6 will be admitted into evidence.

7 (Defendants' Exhibit EN admitted.)

8 BY MS. FOX-YOUNG:

9 Q. That's Mr. Gonzalez's neck?

10 A. Yes.

11 Q. And how many times -- you said you stabbed  
12 Mr. Gonzalez three times in the neck?

13 A. No, once in the neck, and I think a couple  
14 of times in the chest.

15 Q. Oh, okay. And those injuries to his chest  
16 aren't pictured here?

17 A. Right.

18 Q. And you know you sent him to St. Vincent's  
19 Hospital where he received treatment; right?

20 A. Yes.

21 Q. Do you know if he told anything to the  
22 cops when they came to see him at the hospital?

23 A. I don't think so.

24 Q. Yeah, he didn't say anything; right?

25 A. Right.



1 Q. Because what would have happened to him if  
2 he had said something about what you did to him?

3 A. His own people probably would have got  
4 him.

5 Q. You or somebody else would have killed him  
6 again? Tried to kill him again?

7 A. Or his own people.

8 Q. Who are his own people?

9 A. Surenos.

10 Q. And you talked a little bit about an  
11 incident with a correctional officer you attacked?

12 A. Yes.

13 Q. Do you remember his name?

14 A. Alden. I don't remember his whole name.  
15 Allen something.

16 Q. And when was that?

17 A. It was about -- I think it was 2004.

18 Q. What caused you to attack that  
19 correctional officer?

20 A. Like I said, the situation blew out of  
21 control when I was sticking up for one of my  
22 brothers because of the phone. It started real  
23 simple and then it ended up to that, you know.  
24 Ended up a big thing, ended up putting their  
25 attention on me, took it off him, for fighting for

1 the phone. And their attention went on me and it  
2 blew out of control.

3 Q. And so that's why you made the decision to  
4 attack him?

5 A. Yes. Well, I went and asked. You know  
6 what I mean? I can't just do things by myself, you  
7 know.

8 Q. Who did you ask?

9 A. I asked Arturo Garcia. Well, I asked  
10 Juanito, and he went and asked him.

11 Q. So Mr. Calbert, that attack was on  
12 December 29, 2004?

13 A. Right.

14 Q. In the evening, 5:25 p.m.?

15 A. Yes.

16 Q. And you recall -- at that time were you in  
17 the Penitentiary of New Mexico?

18 A. Yes, at the maximum security right there.

19 Q. You were at X pod?

20 A. Yes.

21 Q. And you had your hands behind your back  
22 and an officer cuffed you; is that right?

23 A. Yes.

24 Q. And then Lieutenant Allen ordered that  
25 your door be opened?

1 A. Yes.

2 Q. And you were sitting on the toilet and you  
3 figured out how to slip out of the cuffs; right?

4 A. Yes.

5 Q. And at that time you had somehow in your  
6 hand a homemade knife?

7 A. Yes.

8 Q. And you came charging out of your cell and  
9 began pursuing Lieutenant Allen; right?

10 A. Yes.

11 Q. And you were stabbing him.

12 A. Yes.

13 Q. And he ran away. He ran over to the  
14 shower stand, and you followed him, and you kept  
15 stabbing him; right?

16 A. Yes.

17 Q. And then you charged a sergeant.

18 A. Yes. Yes.

19 Q. And you stabbed him, too?

20 A. Yeah. He tried to stop it.

21 Q. And in order to stop you, that's when they  
22 used chemical agents; right?

23 A. Yes.

24 Q. And you took another stab at Lieutenant  
25 Allen and continued chasing them; is that right?

1 A. Yes.

2 Q. Then you started climbing over the table?

3 A. Yes.

4 Q. And as Lieutenant Allen backed away, he  
5 fell down, and you kept stabbing him.

6 A. Yes.

7 Q. Okay. So when in that series of events  
8 did you ask anybody -- you made the decision in that  
9 moment that you were going to attack Lieutenant  
10 Allen; right?

11 A. It was an ongoing thing, you know. It  
12 happened --

13 Q. I'd also like to ask you a little bit more  
14 about your plea. You pled to the assault of Paul  
15 Silva; right?

16 A. Yes.

17 Q. And I think you said you understand that  
18 the Government has entered into an agreement with  
19 you. That's that 5K document?

20 A. Yes.

21 Q. Whereby, based upon the stories that you  
22 tell for the Government and the work you do for the  
23 Government, they might help you in getting a reduced  
24 sentence; is that right?

25 A. Yes, they might. Yes.

1 Q. And they also have agreed not to charge  
2 you for the murder or conspiracy to murder Javier  
3 Molina?

4 A. They didn't promise me nothing like that.  
5 They never charged me for that.

6 Q. They didn't charge you, even though you  
7 told this jury that you're guilty of it a few  
8 minutes ago?

9 A. Right.

10 Q. And that's because you're working for the  
11 Government.

12 A. Yes.

13 Q. You talked about some benefits. Mr. Beck  
14 discussed about some benefits that you might have  
15 received from the Government. Do you remember  
16 talking to your family about some things the  
17 Government had promised you?

18 A. Probably.

19 Q. Yeah. You know that those calls that you  
20 make from the jail are all recorded; right?

21 A. Yes.

22 Q. Yeah. And that the Department of  
23 Corrections can listen to those calls?

24 A. Yes.

25 Q. And that they get produced to the defense?

1 A. Yes.

2 Q. Through discovery?

3 A. Yes.

4 Q. And they go on the tablets, like the  
5 tablets that -- the tablet that you had or maybe you  
6 still have?

7 A. I -- yes.

8 Q. And on that tablet, you can listen to the  
9 calls and you can read all the material in the case,  
10 know the theories. And so in your calls you told  
11 some family members that you're only going to get  
12 three years, didn't you?

13 A. I don't remember that.

14 Q. You don't remember that? We can play that  
15 call for you. You told them about the TV that the  
16 STIU officer gave you?

17 A. Yes, because they lost mine.

18 Q. So he wanted to make sure you had one.  
19 You also talked about how hard it was to be facing  
20 30 years.

21 A. Yes.

22 Q. And thinking that you wouldn't get out.  
23 That was last June; right?

24 A. Yeah. Like I say, I'm bad on dates. But  
25 I probably could have said that, yes.

1 Q. And then later, after you started working  
2 for the Government, you told your family that you  
3 were going to be home soon; right?

4 A. I hope. I hope.

5 Q. You told them that you were going to be  
6 home soon and that you did things that you didn't  
7 think you were going to do, but it was all worth it;  
8 is that right?

9 A. Yeah.

10 Q. Telling stories for the Government?

11 A. Not telling stories. Telling the truth.

12 Q. And you told your family about how spoiled  
13 the Government had you?

14 A. Compared to what I was at.

15 Q. You told them that you were spoiled and  
16 that you were living pretty good.

17 A. Yeah, compared to Estancia.

18 Q. Mr. Calbert, you had been housed at one  
19 time or another with an individual named Mario  
20 Rodriguez; is that right?

21 A. Yes.

22 Q. Tell me when you were housed with Mr.  
23 Rodriguez.

24 A. I'm housed with him right now, but it's  
25 been a few times I've been in there with him.

1 Q. I'd like to put up the Defendant's  
2 Exhibit -- I'm sorry, the Government's Exhibit 586.

3 Is that Mr. Rodriguez?

4 A. Yes.

5 Q. So you're housed with him now? You've  
6 known him a while?

7 A. Yeah, I could say.

8 Q. How long have you known him?

9 A. Maybe five years, somewhere around there;  
10 ten years. I don't know.

11 Q. You guys kind of run together?

12 A. Yeah. Yeah.

13 Q. Yeah. And how about Tim Martinez? Do you  
14 know him?

15 A. Yeah, I know him.

16 Q. This is Government's Exhibit 561. He's  
17 kind of in your group with Mr. Rodriguez; right?

18 A. Yeah, we're friends. We're brothers.

19 Q. You're housed with him now?

20 A. Yes.

21 Q. And you've known him for several years?

22 A. Yes.

23 Q. At some point were you housed with Mr.  
24 Rodriguez and Mr. Martinez at Southern New Mexico  
25 Correctional Facility?



1 A. In Las Cruces over here?

2 Q. Yes.

3 A. No.

4 Q. Do you know that they were housed at  
5 Southern?

6 A. Yes.

7 Q. And they were housed there with Javier  
8 Molina; right?

9 A. Yes.

10 Q. And let me ask you this. Does Mr.  
11 Rodriguez, who you looked at first -- does he have  
12 kind of a signature move? Does he have an action  
13 that he likes to take when he's going after  
14 somebody?

15 A. Yeah. He likes to bite the ears off.

16 Q. He bites their ears off. How many times  
17 has Mr. Rodriguez bitten ears off, as far as you  
18 know?

19 A. I would think two, maybe; a couple of  
20 times. I'm not sure.

21 Q. A couple of times. Did he ever bite  
22 Javier Molina's ear off?

23 A. I'm not sure if that happened.

24 Q. So at some point Mr. Rodriguez and Mr.  
25 Martinez were down at the Southern New Mexico

1 Correctional Facility. And neither one of them  
2 really liked Javier Molina; right?

3 A. I guess Blue did. Mario liked him.

4 Q. They didn't want him to be in charge?

5 A. That guy was kind of both of their  
6 friends, to tell you the truth.

7 Q. I know he was Mr. Martinez' friend.

8 A. Yeah.

9 Q. He was no friend of Mr. Rodriguez; right?

10 A. I've always believed he was, you know.

11 Q. And so when they were down there, did you  
12 know if Mr. Rodriguez bit anybody's ears off at  
13 Southern?

14 A. No, I didn't hear nothing about that.

15 Q. Where did he bite ears off?

16 A. In the south, in Las Cruces. I mean the  
17 South in PNM, and at the North at PNM.

18 Q. When was that?

19 A. It's been a few years. I'm real bad with  
20 years, like I said. I would ballpark it maybe 2016,  
21 I'm thinking.

22 Q. You know who Mr. Lupe Urquizo is?

23 A. Yes.

24 Q. He's kind of part of your group, too,  
25 isn't he?

1 A. Yes.

2 Q. And anybody else in your group, your  
3 buddies?

4 A. Mauricio Varela. He's pretty close.

5 Q. Okay. And you guys have been kind of  
6 working to change the image of the SNM, haven't you?

7 A. We try.

8 Q. Yeah. What do you do to change the image  
9 of the gang?

10 A. Try to put things together, you know, and  
11 try put some kind of structure, and have people  
12 working out, and just simple things, because it's in  
13 chaos. It was in chaos for a while.

14 Q. Right. And so -- but you're all working  
15 for the Government now; right?

16 A. Yes.

17 Q. All those people you just listed?

18 A. Yes.

19 Q. But you want to change the image of the  
20 gang, and that's part of what the attack when you  
21 tried to murder Paul Silva was about, was it not?

22 A. It was -- we were bumping heads.

23 Q. You wanted to show that you had the power,  
24 you had the control, and you could take him out.

25 A. One of the problems.

1 Q. Okay. One of the problems.

2 A. Yeah, there was a bunch of elements.

3 Q. That was one of the reasons that you  
4 attacked him.

5 A. Yes.

6 Q. The same thing for Mr. Varela?

7 A. Yes.

8 Q. So at some point you say that you told the  
9 Government that you were involved in the conspiracy  
10 to murder Javier Molina?

11 A. Yes.

12 Q. And you told them about these other guys?

13 A. Yes.

14 Q. Okay. And at some point you talked to the  
15 Government about meeting with Lupe Urquizo to get  
16 your stories straight; right?

17 A. We was trying to make sure -- we talked  
18 about the case, but he more or less wanted me to  
19 come over to do what he was doing, you know.

20 Q. He wanted you to tell the same story that  
21 he was telling, and he told you what that was.

22 A. We talked about what he talked about with  
23 the Government about. That was about it.

24 Q. He made it pretty easy for you to say the  
25 same thing; right?

1           A.    No.  I just wanted to know what he said  
2 about me, you know.

3           Q.    Okay.  And all these guys, your buddies,  
4 Mr. Rodriguez and Mr. Martinez and Mr. Varela and  
5 Mr. Urquizo, you were all facing a life sentence for  
6 the Molina case; right?

7           A.    They were.  I think they still are.

8           Q.    Well, and you've told the jury that you're  
9 guilty on Molina, but you didn't get charged.  So  
10 the Government has taken that off the table.  None  
11 of you guys are facing life anymore; is that right?

12          A.    I would think they're not no more.  But I  
13 never got charged in the first place.

14          Q.    Yeah, you never even got charged.  When  
15 you --

16               MR. BECK:  Objection, Your Honor,  
17 commenting on the evidence.  Was that a question?

18               THE COURT:  Well, I think it was okay.  
19 But be careful.  Overruled.

20 BY MS. FOX-YOUNG:

21          Q.    Mr. Calbert, when you made the decision to  
22 go to work for the Government in August -- I think  
23 you said it was in August --

24          A.    I think so.

25          Q.    -- and you flushed that weapon down the

1 toilet at Torrance County --

2 A. Yes.

3 Q. -- were you using a lot of methamphetamine  
4 around that time?

5 A. No.

6 Q. Remember you're under oath.

7 A. Yes.

8 Q. You weren't using any meth?

9 A. No.

10 Q. Okay. And that wasn't making you at all  
11 paranoid?

12 A. No.

13 Q. Okay. You talked to the Government about  
14 all the shanks, all the weapons that were present at  
15 Torrance County, didn't you?

16 A. No, I didn't.

17 Q. Oh, you didn't?

18 A. I told them about mine.

19 Q. You don't remember telling the Government  
20 that there were lots of shanks that people made out  
21 of the metal from the lights at Torrance County?

22 A. I told them about the ones I made.

23 Q. Okay. Do you remember telling them that  
24 there were numerous homemade shanks at Torrance  
25 County?

1 A. Um, no.

2 Q. On August 22, 2017?

3 A. Yes.

4 Q. If I showed you a report that the  
5 Government made because, of course, the lawyers at  
6 this table were present for your interview; right?

7 A. They were present, yes.

8 Q. They were there when you told them all  
9 this stuff, when you talked about the shanks?

10 A. About mine.

11 Q. About your shank. If I showed you a  
12 report that they made after the conversation that  
13 they had with you, would that refresh your memory?

14 A. I would like to see that.

15 MS. FOX-YOUNG: May I approach, Your  
16 Honor?

17 THE COURT: You may.

18 BY MS. FOX-YOUNG:

19 Q. Do you see this section right here?

20 A. I was telling them about mine. They might  
21 have misunderstood me.

22 Q. Oh, okay. Mr. Calbert, would you just  
23 repeat what you just said?

24 A. I said I was telling them about mine and  
25 what I made, and you know what I mean, they probably

1 misunderstood.

2 Q. Okay. So maybe they got bad information  
3 when they said that there were numerous shanks at  
4 Torrance County?

5 A. Yeah, I guess.

6 Q. Okay. In any event, you know about other  
7 people who had weapons at Torrance County?

8 A. Yeah, I did.

9 Q. It was common --

10 A. Right.

11 Q. -- for people to have shanks at Torrance  
12 County. And you talked to the Government about the  
13 fact that people could walk around freely at night  
14 around the pods at Torrance County; right? "People"  
15 being the inmates who were held there?

16 A. Yes. Yes.

17 Q. And it wasn't necessarily a safe place  
18 with all those weapons.

19 A. Yes.

20 Q. You talked a little bit about the rumors  
21 that circulate?

22 A. Yes.

23 Q. And I think you talked about what happens  
24 to somebody who is thought be cooperating?

25 A. Yes. Yes.



1 Q. What happens to them?

2 A. They get hit, they get stabbed, you know.

3 Q. They're in danger of getting killed. Are  
4 you aware that there were rumors floating around  
5 among a number of inmates that Mr. Perez had  
6 cooperated?

7 A. Yes. What it was, in the computer he  
8 had -- I guess he had a enemy list.

9 Q. Okay. And so he was in danger, just like  
10 anybody else who was thought to have cooperated?

11 A. I'm pretty sure could have been.

12 Q. Do you think he talked to you at Torrance  
13 County?

14 A. Um-hum.

15 Q. And told you that he had wanted credit,  
16 that he didn't want anything to do with it anymore?

17 THE COURT: You'll have to speak --

18 THE WITNESS: I'm sorry.

19 BY MS. FOX-YOUNG:

20 Q. It's a little hard to pick up. I'll ask  
21 you again --

22 THE COURT: I'll tell you what. Do you  
23 think we better pick this up --

24 MS. FOX-YOUNG: One more question, Your  
25 Honor, and I'll wrap up?

1 THE COURT: Go ahead.

2 BY MS. FOX-YOUNG:

3 Q. You said you talked to Mr. Perez. You  
4 described the fact that he was unable to physically  
5 defend himself; right?

6 A. Yes.

7 Q. And had trouble getting around; right?

8 A. Yes.

9 Q. And when -- you say you talked to him in  
10 the shower and he told you that he wanted credit;  
11 right?

12 A. Right.

13 Q. And you knew at that time that there were  
14 rumors swirling that Mr. Perez had cooperated.

15 A. Yeah, pretty much.

16 Q. Yeah. And so it was reasonable for him to  
17 say something to protect himself, to maybe to take  
18 credit for something that he hadn't done. Is that  
19 right?

20 MR. BECK: Objection, Your Honor, calls  
21 for speculation.

22 MS. FOX-YOUNG: I think if the witness  
23 knows.

24 THE COURT: If he knows. But ask him if  
25 he knows before you ask him the question.

1 BY MS. FOX-YOUNG:

2 Q. Well, you told me that you know that when  
3 rumors are circulating, people are in danger. Tell  
4 me, if you know, if it's reasonable, then, for  
5 somebody to take credit for something that maybe  
6 they didn't do, to protect themselves.

7 A. No, because -- they probably, yeah, but  
8 there's -- I've heard, you know what I mean, it's  
9 been around that that's what he's been saying from a  
10 long time already, you know.

11 Q. And it's been around that somebody was  
12 going to move on him, hasn't it?

13 A. No.

14 MR. BECK: Objection, Your Honor.  
15 Foundation and hearsay.

16 THE COURT: I think we do have a hearsay  
17 problem.

18 MS. FOX-YOUNG: All right, Your Honor.

19 THE COURT: Do you want to quit for the  
20 evening?

21 MS. FOX-YOUNG: Yes, Your Honor.

22 THE COURT: All right.

23 Because we're going to take our first  
24 weekend break during the trial, I want to remind you  
25 of a few things that are especially important.

1 Until the trial is completed, you're not to discuss  
2 the case with anyone, whether it's members of your  
3 family, people involved in the trial, or anyone  
4 else, and that includes your fellow jurors. If  
5 anyone approaches you and tries to discuss the trial  
6 with you, please let me know about it immediately.

7 Also, you must not read or listen to any  
8 news reports of the trial. Again, don't get on the  
9 internet and do any research for purposes of this  
10 case.

11 And finally, remember that you must not  
12 talk about anything with any person who is involved  
13 in the trial, even if it doesn't have anything to do  
14 with the trial.

15 If you need to speak with me, simply give  
16 a note to one of the court security officers or Ms.  
17 Standridge.

18 I probably won't be repeating these next  
19 week, but do keep them in mind each time we take a  
20 break for the evening or the weekend. Just keep  
21 them in mind.

22 Looks like about eight of us are going to  
23 make the same road. Not all of us to Hobbs, but  
24 dropping people off along the way; or Carlsbad or  
25 Artesia. Everybody be safe on their travels. My

1 prediction is that Brady is going to get his sixth  
2 ring and 28/21. So we'll see how smart I am on  
3 Monday. Right? I'm going to root for Philadelphia,  
4 though. But I don't think we'll get it done.  
5 That's pretty hard to say if you're a Cowboy fan,  
6 but I'm going to root for Philadelphia.

7 Y'all have a good trip. Have a good  
8 weekend. Get some rest. See you at 8:30 on Monday  
9 morning.

10 (The jury left the courtroom.)

11 THE COURT: All right. Y'all have a good  
12 weekend.

13 MR. LOWRY: Judge, at lunch I was going to  
14 make my record on the objections and I haven't been  
15 able to. May I?

16 THE COURT: Okay.

17 MR. LOWRY: Your Honor, we wanted to join  
18 Ms. Jacks' objections throughout the day, and rather  
19 than gobbling up courtroom time with the jury in  
20 here, I wanted to put that on the record, so Mr.  
21 Baca would join those on both Fifth and Sixth  
22 Amendment grounds. And Your Honor, I just think --  
23 I'll look at it over the weekend. But I've just --  
24 given the cross inadmissibility of the evidence and  
25 the limiting instructions and some of the statements

1 that were made, we're going to consider moving for a  
2 mistrial.

3 THE COURT: All right. All right, y'all  
4 have a good weekend.

5

6

7

8 Monday, February 5, 2018

9 THE COURT: All right. Good morning,  
10 everyone. I appreciate everybody being here and on  
11 time. The jury is here and ready to go.

12 Mr. Villa.

13 MR. VILLA: When I arrived this morning, I  
14 was informed by the United States marshals that Mr.  
15 Perez is pretty ill. I went downstairs to speak to  
16 Mr. Perez. He informs me that he got ill on  
17 Saturday, some kind of flu. He hasn't eaten since  
18 Saturday. He feels like he has a fever, head cold,  
19 as well as diarrhea. He's not able to control that.  
20 As the Court has heard over the course of this case,  
21 he's had a number of major surgeries in the  
22 abdominal area and doesn't have the abdominal  
23 muscles that you or I might, and so he's having a  
24 lot of accidents.

25 And I guess that I've got a couple of

1 fears. One is that he's not able to give his full  
2 attention to the Court today; two, that the rest of  
3 us at the table get what he has, along with perhaps  
4 our co-counsel and we make this worse than it is.  
5 And three, that he asked to see medical on Saturday.  
6 They gave him some Tylenol. He hasn't seen a  
7 doctor.

8           Given his frail state of health, I think  
9 that him having the flu is much more serious than  
10 you or I having the flu. We might be able to make  
11 it through it. But Mr. Perez is having a very  
12 difficult time. I think the only thing that I can  
13 ask the Court to do is to give us a day, let him go  
14 get seen by a doctor, and hope that his situation  
15 improves and we can resume tomorrow.

16           THE COURT: What's the Government's  
17 thoughts on this?

18           MR. BECK: Your Honor, the Government is  
19 willing, ready, and able to proceed. But I'm not  
20 sure that that's the most compelling concern. I  
21 think the most compelling concern is: The defendant  
22 has the right to be here for the trial, and to be  
23 present, both mentally and physically, for the  
24 trial.

25           So with those concerns in mind, I've

1 spoken with Mr. Villa and Ms. Fox-Young, and it does  
2 sound serious. If we can -- if the marshals can  
3 coordinate to get him to a doctor today and make  
4 sure he's back ready tomorrow, I think that may be  
5 the best way to proceed. So the Government, as I  
6 said, is ready and wants to proceed today, but the  
7 United States doesn't want this to be an issue later  
8 down the road.

9 MS. ARMIJO: Your Honor, if I may just say  
10 for scheduling purposes, I know that we are on  
11 schedule, if not ahead of schedule. I know that  
12 I've had to move several witnesses up. For example,  
13 the medical examiner was going to be testifying  
14 today, but I didn't have her scheduled till  
15 Thursday. So we have been juggling around witnesses  
16 because we are kind of full speed ahead, now that  
17 we're in trial and we're going and everything else.  
18 So it's not as if we are behind schedule and this  
19 will cause a great deal of delay. And we are  
20 concerned for Mr. Perez' situation.

21 But I just wanted to let the Court know as  
22 far as where we are in trial.

23 THE COURT: Any of the other defendants  
24 have any thoughts on the issue?

25 MS. BHALLA: I just don't want to get what



1 Mr. Perez has. No offense to Mr. Perez, but I am a  
2 little worried if the lawyers start dropping like  
3 flies, we're going to have a problem, Your Honor.

4 MR. LOWRY: On behalf of Team Baca, Your  
5 Honor, I would second that concern. I think I've  
6 gone through that, but my teammates haven't, and I  
7 think if we can avoid the catastrophe that could be  
8 pending, we should. I agree with Ms. Armijo. In  
9 our perspective, we are ahead of schedule, and I  
10 think we're going to end much quicker than anybody  
11 anticipated.

12 MS. JACKS: We have no objection on behalf  
13 of Mr. Sanchez. And the only thing I would note is  
14 that Mr. Perez is white as a sheet.

15 THE COURT: Well, here's my concern,  
16 though. I don't know what one day is going to give  
17 us. If he's got the flu, he's got the flu. I'm not  
18 sure what that gives us. I wish he'd been able to  
19 see a doctor on Saturday, but I'm not sure what  
20 anybody can do. We've got some jurors that have  
21 kind of gutted it out. He's not going to be  
22 testifying or anything today. I'd rather just see  
23 if we could see how it goes. If we need to -- if  
24 it's not going to work, you know, we're going to be  
25 taking too many breaks or things like that, or it's

1 just not going to work, then we may have to rethink  
2 it as the day goes on.

3 But I'm a little concerned about -- I'm  
4 just not sure what a day does for us. If they tell  
5 him he's got the flu, what do we do tomorrow and  
6 things like that. I think we're just going to have  
7 to gut through this a little bit.

8 MR. VILLA: Your Honor, I'm no doctor.  
9 I'm married to a nurse and know a little bit about  
10 this stuff. I know if they give him Tamiflu in a  
11 certain period of time, it can have a significant  
12 improvement on his health. I don't know what the  
13 time period is. He did request to see medical on  
14 Saturday because he was concerned about Monday. I  
15 know there is a window of time you've got to get  
16 Tamiflu. And if that window is today, he may be  
17 healthy enough to proceed tomorrow as opposed to  
18 getting worse or getting us into a real crisis  
19 situation.

20 THE COURT: Is there anybody from the  
21 Marshal Service that can comment as to why he wasn't  
22 given medical help on Saturday? What could be done  
23 today to maybe get somebody over here to help him  
24 out?

25 THE MARSHAL: Your Honor, Joe Castro at

1 the Marshal Service. I understand that Mr. Perez  
2 saw a provider this morning. I don't know the  
3 provider's hours on weekends, if they're on call.  
4 But he did see someone this morning, and we would  
5 make sure he gets seen immediately at the time he  
6 returns back to the facility.

7 THE COURT: How long was he seen by a  
8 provider this morning?

9 MR. PEREZ: Just a nurse.

10 THE MARSHAL: How long were you with them?

11 MR. PEREZ: (Snaps fingers.)

12 THE MARSHAL: Not long, Your Honor.

13 MR. VILLA: Mr. Perez is saying he saw a  
14 nurse. He didn't see a doctor.

15 THE COURT: But sometimes that's --

16 THE MARSHAL: I don't know if it's a  
17 nurse, nurse practitioner. Just some sort of  
18 provider, Your Honor.

19 THE COURT: Do you have somebody that  
20 could swing by and see him here at the courthouse  
21 today?

22 THE MARSHAL: That's what the U.S.  
23 Attorney's Office is requesting, and I've never seen  
24 that happen.

25 THE COURT: Would you try to make it?

1 There's a lot of things unusual about this trial.

2 THE MARSHAL: I could request it, yes,  
3 Your Honor.

4 THE COURT: If somebody could swing by,  
5 I'd very much appreciate it.

6 MS. ARMIJO: Your Honor, what I was  
7 requesting is even maybe this morning -- and I don't  
8 know, and I don't want to put the U.S. marshals out.  
9 Maybe we could check to see if they are able to -- I  
10 know this is unusual, but I was going to see if  
11 maybe he could -- I know Memorial Medical Center  
12 sees inmates. If he could go to Memorial Medical  
13 Center, I think all of us who have had been sick,  
14 there's medications to stop bowel situations.  
15 There's medicines for nausea. Things even to make  
16 him more comfortable. And of course, they can test  
17 him for the flu, and then we know what we're dealing  
18 with. If we have somebody here that has type A or  
19 type B flu, that's an issue, too, and getting the  
20 Tamiflu.

21 But there certainly are medications that  
22 he can take that would make him more comfortable and  
23 ease the situation. So I don't know if we could  
24 maybe take a break so the marshals can explore that  
25 and to see if that's something they can do. But I

1 don't know.

2 THE MARSHAL: I can certainly take him to  
3 the hospital, Your Honor.

4 MR. VILLA: And Your Honor, I spend more  
5 time than you'd like to know fighting with various  
6 jail facilities trying to get my clients medical  
7 attention. Taking him back to the Dona Ana  
8 Detention Center to get medical help is not a good  
9 idea. I would second the notion that he needs to go  
10 to an urgent care or something like that. If he's  
11 going to see a doctor, that's probably the fastest  
12 way to get him to the doctor.

13 THE COURT: Why don't you do this: Why  
14 don't you see if you can get somebody here. Maybe  
15 we'll take an early lunch break, and if we don't  
16 have somebody here by then, you can take him over to  
17 the hospital or take him somewhere.

18 THE MARSHAL: Yes, Your Honor.

19 THE COURT: But let's see if you can get  
20 somebody over here to look at him, and see if they  
21 can start prescribing some medicines or things like  
22 that, and we'll maybe take an early lunch break  
23 today. And if we don't have somebody over here by  
24 this point, then we can -- you can run him to the  
25 hospital, and we'll just wait for him.

1 THE MARSHAL: Very well.

2 MR. CASTELLANO: Your Honor, the concern I  
3 have -- I'm all in favor of moving this trial, but  
4 the concern I have is if Mr. Perez has kind of  
5 gastrointestinal distress and feels the need to move  
6 quickly, he won't be able to move quickly, and he is  
7 shackled. So I'm concerned that he may need to make  
8 a run for the bathroom. He may trip. He's going to  
9 be shackled.

10 THE COURT: He can't run to the bathroom.  
11 But Mr. Villa, Ms. Fox-Young, signal, and we'll  
12 just -- I'll just dismiss the jury at that time. I  
13 won't hesitate to do it. Okay?

14 MS. FOX-YOUNG: Your Honor, just briefly.  
15 You know, Counsel is in a difficult position because  
16 we've all got to stay healthy through this trial,  
17 too. I've got a four-month-old baby at home and an  
18 immunocompromised husband, and I want to be able to  
19 sit and talk to my client through trial. So we've  
20 got a situation where we've got to get Rudy healthy  
21 and we've got to stay healthy. So we can't sit with  
22 him this morning. So I just hope the Court  
23 understands. I mean, he's coughing. If he does  
24 have flu and hasn't had Tamiflu, we could all be in  
25 really bad shape really soon.

1 THE COURT: Well, we've just got a  
2 problem. We've got men over here and at the defense  
3 table that are coming out of detention facilities.  
4 It's just a hard place as far as contagious  
5 diseases. We all that work in the court system know  
6 that.

7 MR. BECK: The only other thing I'll add,  
8 Your Honor, is: It also just concerns me of the  
9 spectacle if Mr. Perez has to raise his hand or --

10 THE COURT: No, he just tells Mr. Villa or  
11 Ms. Fox-Young, and they'll signal to me we need to  
12 take a break. It will be done automatically.

13 MR. BECK: Do we have enough time for  
14 that, Mr. Villa? Ms. Fox-Young? Do you think we  
15 have enough time for him to indicate to you?

16 THE COURT: Mr. Beck, that's just the way  
17 it's going to work. Okay? All right.

18 All rise.

19 MS. FOX-YOUNG: Your Honor, we just need  
20 to get Mr. Perez dressed for court, if the jury is  
21 going to come in. I'm not sure where his  
22 clothing -- can we just get him a jacket?

23 MR. VILLA: Just bring the jacket.

24 THE COURT: I looked at Mr. Perez'  
25 arguments this morning on the impeachment. I'm

1 still not convinced that his credibility has been  
2 attacked under 806. I'm also not convinced that 806  
3 comes into play until his credibility is attacked.

4 Is Mr. Palomares going to come back, Mr.  
5 Beck, in any way? I forgot to put Mr. Palomares on.

6 MR. BECK: I don't think we intend to  
7 recall him.

8 THE COURT: It might be that during the  
9 course of the trial, we might want to bring Mr.  
10 Palomares up and put him on the stand or have him  
11 testify here as to what he knows. It might be just  
12 a good record here. If he's not going to testify  
13 that anybody told him there was a threat on Mr.  
14 Perez, or otherwise, it might just make for a clean  
15 record here. I'll leave it to you as to what it is,  
16 but it might help the record if he were to come up  
17 one day out of the presence of the jury and we see  
18 if he has anything to say.

19 MR. BECK: We can do that. My  
20 recollection of the record is, when he was asked if  
21 he knew anything about a threat, he said, "I don't  
22 know that."

23 THE COURT: That's mine, too. But we  
24 might want to just plumb it a little better --

25 MR. BECK: Understood, Your Honor.



1 THE COURT: -- to do that. But I still  
2 think 806 is not available to a party opponent until  
3 his credibility is attacked. And right at the  
4 moment you have everybody wanting his statements to  
5 be credible.

6 MR. VILLA: Well, Your Honor, it's the  
7 defense that's intending to impeach Mr. Perez'  
8 statements.

9 THE COURT: I know.

10 MR. VILLA: We're entitled to impeach.

11 THE COURT: I don't think so. Nothing in  
12 806 says that, you know, you can start supporting  
13 his credibility on another statement that hasn't  
14 been introduced into court. Right now nobody is  
15 attacking his credibility. You're trying to get a  
16 statement in.

17 Pull the door shut. Does he have his  
18 jacket? Is that what he's going to wear today?

19 MS. FOX-YOUNG: We're looking for a  
20 jacket, and a mask. I think the marshals went to  
21 gather both of those things.

22 THE COURT: Do you want to just explain in  
23 your own words to the jury that he's sick today, or  
24 what do you want to do? Do you want me to do it?

25 MR. VILLA: I think probably the Court.

1 THE COURT: Okay.

2 MR. VILLA: And Your Honor, I would just  
3 say, while we've got a couple of minutes here, I  
4 don't think that it's required that anyone else be  
5 attacking the credibility of the statement that Mr.  
6 Perez made to Agent Palomares in order for us to be  
7 able to introduce statements that contradict the  
8 statements made to Mr. Palomares, because as I  
9 talked about in the brief and, you know, the senate  
10 report and those sorts of things, there are other  
11 reasons to bring in an impeachment statement to try  
12 to help explain or help the jury understand the  
13 statement that was introduced through Agent  
14 Palomares.

15 THE COURT: I disagree. Take a look at  
16 806. It's not going to come into play until his  
17 credibility is attacked. Those are the cases that  
18 you cited from the First and the Seventh Circuit.  
19 And I read the advisory rule there. But until it's  
20 attacked in some way, I'm not sure you're entitled  
21 to come in and bring in I guess what would be a  
22 prior inconsistent statement. Take a look at it.

23 MR. VILLA: I'll look at it again, Your  
24 Honor.

25 THE COURT: I think you pushed it pretty

1 hard, and you probably exhausted it, but I still  
2 think that it's going to require somebody to attack  
3 his credibility. And right now, nobody is doing  
4 that.

5 Does anybody else have anything while  
6 we're waiting for the jacket to come up?

7 Anything from the Government to discuss?

8 MR. BECK: No, Your Honor.

9 THE COURT: Ms. Jacks, anything?

10 MS. JACKS: No.

11 THE COURT: Mr. Lowry, anything about --

12 MS. ARMIJO: I bet you're happy with the  
13 football results.

14 MR. VILLA: Looks like he's got his  
15 jacket. So we can bring the jury in. He's going to  
16 wear a medical mask. So I think if the Court would  
17 just explain that to the jury, we'd appreciate it.

18 THE COURT: I will. All rise.

19 (The jury entered the courtroom.)

20 THE COURT: Everybody be seated. I  
21 appreciate you coming back and ready to go on time.  
22 We needed to discuss a few matters this morning  
23 after all of us being gone. I appreciate your  
24 patience.

25 I had a nice trip to Hobbs. And got there

1 a little bit after the start of the game. You don't  
2 want to take me to Las Vegas, do you? I would have  
3 gotten it all wrong. I was happy with the game. I  
4 was glad to see Philadelphia win. Brady's going to  
5 throw for 505 yards and score 33 points and lose. I  
6 wouldn't have thought it would have happened. So it  
7 was a fun game. I got to spend a little time with  
8 my dad on -- his birthday is on Wednesday, but  
9 that's the best we can do.

10 I had a good weekend and I hope you had a  
11 good weekend and I appreciate you being back.

12 As can you tell, Mr. Perez is going to  
13 wear a mask. He's not feeling well this morning, so  
14 we might take some breaks to help him get through  
15 the day, and maybe have some longer gaps here; see  
16 if he may need medical attention or something like  
17 that. We'll just try to gut through it here a  
18 little bit this morning, see how it goes. But he's  
19 going to wear a mask to not get anybody else sick.  
20 And we know it's a tough time of year for people  
21 like that. And I appreciate Mr. Perez hanging in  
22 there with us, and we'll see how it goes.

23 All right. Is Mr. Calbert still our  
24 witness?

25 MR. BECK: Yes, he is. I think he's being

1 brought up. I think they were just waiting for the  
2 jury to clear. So it may take a moment.

3 THE COURT: All right.

4 All right, Mr. Calbert, if you'll return  
5 to the witness box. And I'll remind you,  
6 Mr. Calbert, that you're still under oath.

7 All right. Ms. Fox-Young, if you wish to  
8 continue your cross-examination of Mr. Calbert, you  
9 may do so at this time.

10 MS. FOX-YOUNG: Thank you, Your Honor.

11 THE COURT: Thank you, Ms. Fox-Young.

12 DAVID CALBERT,  
13 after having been previously duly sworn under  
14 oath, was questioned, and continued testifying  
15 as follows:

16 CONTINUED CROSS-EXAMINATION

17 BY MS. FOX-YOUNG:

18 Q. Good morning, Mr. Calbert.

19 A. Good morning.

20 Q. Do you recall Friday afternoon you and I  
21 were talking about a statement that you said Mr.  
22 Perez made to you at Torrance County?

23 A. Yes.

24 Q. Okay. And was that in 2017?

25 A. Yes.

1 Q. Okay. And you know that Javier Molina  
2 died in early 2014?

3 A. Yes.

4 Q. And so this statement that you say  
5 Mr. Perez made to you -- that was at least three  
6 years after Mr. Molina died, is it not?

7 A. Yes.

8 Q. And when Mr. Perez talked to you, he told  
9 you he just wanted credit; right? He wanted credit  
10 for the piece?

11 A. Yes, for putting something in. Helping  
12 out. For helping out.

13 Q. And he didn't give you any details about  
14 how the walker piece was taken, did he?

15 A. No.

16 Q. And he didn't tell you that Mario  
17 Rodriguez came to take it from him, did he?

18 A. No, he didn't mention that.

19 Q. And he didn't tell you, either, that he  
20 was scared of Mario Rodriguez, did he?

21 A. No.

22 Q. Or that he would be next if he stopped  
23 Mario?

24 A. He didn't do that.

25 Q. Because that would be weak? He didn't

1 tell you that?

2 A. No.

3 Q. And all this happened after Rudy was  
4 charged; right?

5 A. Yes.

6 Q. Can you tell me when you were charged? I  
7 know not in this case, but you were charged in  
8 another case. Do you remember when that was?

9 A. Right; I was arrested at the first of all  
10 this. I don't know exactly what the date, you know  
11 what I mean, but...

12 Q. Late 2015?

13 A. Might have been.

14 Q. Okay. And at some point after you were  
15 arrested and charged, did you get a computer to use  
16 that had the information from the case on it?

17 A. Yes.

18 Q. And that's what's called a tablet?

19 A. Yes.

20 Q. And do you still have that tablet?

21 A. I just got it back, yes.

22 Q. So you've had it since close to the time  
23 that you were charged?

24 A. On and off.

25 Q. Okay. And why was it taken away?

1           A.     Well, I guess something happened in  
2 Sandoval when they came and got everybody's, because  
3 somebody was tampering with them and whatnot.

4           Q.     Do you know if that was somebody working  
5 for the Government who was tampering with them?

6           A.     I can't say. I don't know.

7           Q.     So on that computer, that tablet, you were  
8 able to see the statements that other gang members  
9 working for the Government were making; right?

10          A.     There was a lot -- I looked at a lot of  
11 them, but there was a lot more.

12          Q.     Right. And so you knew that Mr. Perez had  
13 been in solitary confinement next to Billy Cordova?

14                 MR. BECK: Objection, Your Honor. I think  
15 based on his last statement, I think this would all  
16 be hearsay.

17                 THE COURT: It sounds like it would be,  
18 Ms. Fox-Young.

19 BY MS. FOX-YOUNG:

20          Q.     Did you know -- you said that you knew  
21 statements that some of the folks working for the  
22 Government were making. Did you know about  
23 statements that Mr. Billy Cordova was making?

24          A.     Yes.

25          Q.     And did you know -- do you know what year



1 those pertained to?

2 A. I'm not sure.

3 Q. Do you know if they pertained to Mr.  
4 Perez?

5 A. I'm thinking some of them.

6 MR. BECK: Objection, Your Honor. That  
7 would be hearsay.

8 THE COURT: Sustained.

9 MS. FOX-YOUNG: I won't elicit any further  
10 if he doesn't know, Your Honor.

11 BY MS. FOX-YOUNG:

12 Q. And so you told the Government about some  
13 things that you say Mr. Perez told you. You told  
14 the Government in 2017, too; right?

15 A. Yes.

16 Q. After you'd had this computer for a couple  
17 years?

18 A. Yes.

19 Q. And that was also after you'd sat down  
20 with Lupe Urquizo and gotten your stories straight;  
21 right?

22 A. No, we didn't -- we talked about it, a  
23 little bit, about it. But that meeting was -- he  
24 was trying to pretty much recruit me to go do what  
25 he was doing.

1 Q. Mr. Calbert, in terms of the timing, you  
2 sat down with Mr. Lupe Urquizo before he talked to  
3 the Government; right?

4 A. Yes.

5 Q. And you talked to him about this case?

6 A. Not this part of it, but yes.

7 Q. Okay. And you knew, didn't you, that Mr.  
8 Perez wasn't pleading guilty; that he was fighting  
9 the case; right?

10 A. Yes.

11 Q. And you knew that unlike the killers  
12 Armenta, Montoya, Rodriguez, and Martinez, he was  
13 going to fight the case at trial?

14 A. Yes.

15 Q. And you knew that the Government would  
16 like to hear you implicating Mr. Perez; right? That  
17 would give you a better deal?

18 A. No, I figured, you know what I mean,  
19 but...

20 Q. Yeah, serve him up and you'd get a better  
21 deal from the Government?

22 A. There's a lot more other things that they  
23 would probably rather like than that, you know what  
24 I mean?

25 Q. But you knew they'd like that. Do you

1 remember on Friday you and I were talking about some  
2 phone calls that you made from the jail?

3 A. Yes.

4 Q. And I asked you about some of them. I  
5 asked you if you remembered talking to your family  
6 members about getting home in three years. Do you  
7 remember me asking you that?

8 A. Yeah, I remember that, yes.

9 Q. Do you remember telling your family you'd  
10 be home in maybe three years?

11 A. Maybe my mom, you know, just trying to  
12 comfort her. She's having a real hard time with all  
13 this. So I tried a more comforting thing, rounding  
14 things off. It's not up to me. It's up to the  
15 Government.

16 Q. The folks at this table get to make a  
17 decision and tell the Court how long you should  
18 serve; right?

19 A. Yes, ma'am.

20 Q. Do you remember talking to anybody beside  
21 your mom about getting a sweet deal?

22 A. I don't know about a sweet deal. Maybe a  
23 deal.

24 Q. Okay.

25 MS. FOX-YOUNG: Your Honor, I'd like to

1 play -- and I don't think the Government objects,  
2 and we've provided this to the Government. This is  
3 going to be our Exhibit Z1. I won't move it yet.

4 MR. BECK: Your Honor, I did not object  
5 based on his testimony last week. However, I think  
6 that now there wouldn't be a reason -- doesn't sound  
7 like he needs refreshing of his recollection. And  
8 he just explained he remembers that and why he said  
9 it. It's not impeachment. At this point it's just  
10 hearsay.

11 THE COURT: Why don't y'all approach so I  
12 know what's on the tape?

13 (The following proceedings were held at  
14 the bench.)

15 THE COURT: What is on this Z1?

16 MS. FOX-YOUNG: It's about a  
17 one-and-a-half-minute recording of him talking to --  
18 I believe it's his brother, not his mother, so...

19 THE COURT: Oh, this is Calbert.

20 MS. FOX-YOUNG: It's him. And I think  
21 you'll be able to identify his voice. This is not  
22 for impeachment. It's very quick, and just what  
23 he's getting and what he's been offered. And I know  
24 the Government hasn't had a chance to listen to it.  
25 It's very short and the Government provided these

1 calls, thousands of them.

2 THE COURT: What is the problem with it,  
3 then?

4 MR. BECK: I think it's hearsay. You can  
5 impeach with bias and motive, but you can't with  
6 hearsay unless we're going to give a limiting  
7 instruction that this isn't considered for the  
8 truth; it's just bias and motive, and it would be  
9 irrelevant. I think she can ask him the  
10 information. If he doesn't remember, she can  
11 refresh his recollection, but that takes place  
12 outside of the jury.

13 THE COURT: Well, why don't you set it up?  
14 Why don't you set it up and see if he made these  
15 statements? If he made the statement, then I'll let  
16 you impeach him with the statements and I'll give a  
17 limiting instruction that this is to impeachment of  
18 Mr. Calbert and they can't consider it to the truth  
19 of the matter. Is that acceptable?

20 MS. FOX-YOUNG: That's fine.

21 THE COURT: Why don't you set it up and  
22 see if he needs to refresh his memory? If he  
23 doesn't, we'll go on.

24 MS. FOX-YOUNG: If he doesn't, you'll  
25 allow me to play at this time?

1 THE COURT: I'll allow you to play it.

2 (The following proceedings were held in  
3 open court.)

4 THE COURT: Ms. Fox-Young.

5 MS. FOX-YOUNG: Thank you, Your Honor.

6 BY MS. FOX-YOUNG:

7 Q. Mr. Calbert, you told me you recalled  
8 telling your mother you thought you were only going  
9 to get three years; is that right?

10 A. Yes.

11 Q. But you don't remember telling anybody  
12 else?

13 A. No.

14 MS. FOX-YOUNG: Your Honor.

15 THE COURT: Yeah, you can go ahead and  
16 play it.

17 MR. BECK: And Your Honor, will you  
18 provide the instruction to the jury?

19 THE COURT: This is just used to -- Ms.  
20 Fox-Young, this functions -- this can only be used  
21 to impeach Mr. Calbert. It's not to consider it for  
22 the truth of the matter of the statements that are  
23 going to be made, but you can consider it in  
24 determining whether Mr. Calbert is truthful or  
25 credible or not.

1 (Audio clip played.)

2 BY MS. FOX-YOUNG:

3 Q. And Mr. Calbert, this is what you hear on  
4 your end when you make a call from the jail, is it  
5 not?

6 A. Yes.

7 Q. And this is just the recording that  
8 precedes every jail call that you make?

9 A. Yes. Yes.

10 Q. Okay. Go ahead.

11 (Clip played.)

12 Q. Is that your voice, Mr. Calbert?

13 A. Yes.

14 Q. Okay. Go on.

15 (Clip played.)

16 Q. Do you know who you were talking to on  
17 that phone call?

18 A. Yes. That was my little brother.

19 Q. Okay. You have a couple of brothers?

20 A. Yes.

21 Q. And I think one of the first things you  
22 said to him was you'd be out in a couple years,  
23 three years at the worst; is that right?

24 A. Yeah. Just, like I said, comforting my  
25 family.

1 Q. But that's what you told them?

2 A. Yes, yes.

3 Q. And you also told him, did you not, that  
4 they were going to come after you with another  
5 murder charge; right?

6 A. Yes.

7 Q. And is the "they" the people at this  
8 table?

9 A. Yes.

10 Q. And is that the murder charge for the  
11 death of Javier Molina?

12 A. Yes.

13 Q. And you said they were going to "bury me,"  
14 that you were through; right?

15 A. Yes.

16 Q. How did you know that?

17 A. Because I was facing 30 right now, and I  
18 knew, so if they did come on another charge, I would  
19 have been done.

20 Q. And they told you they were going to come  
21 with another charge if you didn't tell stories for  
22 them; right?

23 A. No.

24 Q. No, they didn't say that? And you said,  
25 "This is really the only way out, bro. I got to



1 look out for myself"; right?

2 A. Yes.

3 Q. And when you said "This is really the only  
4 way out," you're talking about working for the  
5 Government?

6 A. Yes.

7 Q. So that's really what you're getting in  
8 exchange for working for the Government, isn't it?

9 A. I would expect, yes.

10 Q. You're getting to walk on a murder charge?

11 A. Like I said, I was never charged with that  
12 in the first place.

13 Q. You were never charged at all. And you're  
14 expecting a couple years, three years at the worse;  
15 right?

16 A. At the best, you know what I mean?

17 Q. At the best. And on Friday we talked  
18 about stabbing Mr. Silva, which carries 30 years;  
19 right?

20 A. Yes.

21 Q. But even though you've admitted to that  
22 and even though you've admitted to being involved in  
23 the murder of Javier Molina, three years at the  
24 worse; right?

25 A. Like I said, it's not up to me. It's up

1 to them people at the table and the Judge, so --

2 Q. And in fact, if you had been charged with  
3 the murder of Javier Molina, you would have been  
4 facing life; right?

5 A. I'm already facing life.

6 Q. And if you were convicted, you would have  
7 spent the rest of your life in prison?

8 A. I'm already facing 30 years.

9 Q. Three years at the best, right -- or three  
10 years at the worst?

11 A. My mom, I was comforting her, yeah.

12 MS. FOX-YOUNG: Thank you, Your Honor. No  
13 further questions.

14 THE COURT: Thank you, Ms. Fox-Young.

15 Ms. Bhalla, Mr. Maynard, do you have any  
16 questions of Mr. Calbert?

17 MS. BHALLA: No, Your Honor. Thank you.

18 THE COURT: How about you, Ms. Jacks?

19 MS. JACKS: I do, Your Honor. Thank you.

20 THE COURT: Ms. Jacks.

21 CROSS-EXAMINATION

22 BY MS. JACKS:

23 Q. Mr. Calbert, you told us last week that  
24 you go by the nickname Spider?

25 A. Yes, ma'am.

1 Q. Is that a name that you gave yourself, or  
2 is it a name that was given to you?

3 A. I gave myself.

4 Q. What was the thought behind giving  
5 yourself that name Spider?

6 A. It sounded cool.

7 Q. What about it sounded cool?

8 A. It just does. It just does.

9 Q. It does? Is a spider, the nickname  
10 Spider, meant to put fear into other people?

11 A. I'm sure it does, some.

12 Q. Is it to suggest that you're a dangerous  
13 person?

14 A. Maybe.

15 Q. Is it also to suggest that you may be a  
16 person that can sneak up on somebody and surprise  
17 them?

18 A. I guess you could look at it like that.

19 Q. Is that how you looked at it when you  
20 named yourself Spider?

21 A. No.

22 Q. How did you look at it?

23 A. Like I said, it sounded good.

24 Q. Correct me if I'm wrong, but did you go to  
25 prison in 1998?

1 A. Yes.

2 Q. And since 1998, have you ever been out of  
3 custody?

4 A. Yes. Yes.

5 Q. Okay. So tell me, when did you get out of  
6 custody after you went in in 1998?

7 A. Must have been about maybe 2003, I'm  
8 thinking.

9 Q. And then you went back in?

10 A. Yes.

11 Q. And once you went back in, have you been  
12 in prison that whole time?

13 A. Since 2004, yes.

14 Q. Now, Ms. Fox-Young was just asking you  
15 some questions about the case that you were charged  
16 with, and I just want to go over that a little bit.  
17 Okay? You were arrested in December of 2015 when  
18 all these -- when a bunch of people allegedly from  
19 SNM were arrested; right?

20 A. Yes.

21 Q. And you weren't charged in this case, but  
22 you were charged in a different case; right?

23 A. Yes.

24 Q. And that case -- was the case number case  
25 number 15-4269?

1 A. I can't recall.

2 Q. Were you charged in that case with two  
3 crimes?

4 A. Yes.

5 Q. All right. And were the two crimes the  
6 conspiracy to murder Paul Silva and assault with a  
7 deadly weapon on Paul Silva?

8 A. No.

9 Q. Okay. What were the crimes?

10 A. One I was doing time for at the time were  
11 two COs and that Bandit. I don't know his name.  
12 Gonzalez? Gonzalez, maybe.

13 Q. Right. And you told us about that last  
14 week.

15 A. Yes.

16 Q. But my question is: When you got arrested  
17 in December of 2015 and you were charged in a  
18 separate case, were the charges in that case related  
19 to the assault on Paul Silva?

20 A. What do you mean related? Like --

21 Q. Were you charged with conspiring to kill  
22 Paul Silva?

23 A. No, not yet.

24 Q. And were you charged with assault with a  
25 deadly weapon on Mr. Silva?

1           A.    No, it was just prison. I was just in  
2 trouble in prison for it. They hadn't brought  
3 charges on me.

4           Q.    But in December of 2015, you were arrested  
5 on a new case; right?

6           A.    It's the same case, yeah. It was for  
7 that.

8           Q.    It was for the assault on Paul Silva?

9           A.    Yes.

10          Q.    The one we saw on the video last week?

11          A.    Yes.

12          Q.    And were there any co-defendants on your  
13 case?

14          A.    Mauricio Varela.

15          Q.    So Mr. Varela was also accused of  
16 assaulting Mr. Silva with you?

17          A.    Yes.

18          Q.    And Mauricio Varela -- is he an SNM Gang  
19 member?

20          A.    Yes.

21          Q.    Does he go by the nickname of Archie?

22          A.    Yes.

23          Q.    All right. So you were asked some  
24 questions about Mr. Silva last Friday, and I want to  
25 follow up on a few of those things. Okay? So the

1 assault on Mr. Silva, the one that we saw in the  
2 video -- did that take place at the Penitentiary of  
3 New Mexico South facility?

4 A. Yes.

5 Q. And that's in Santa Fe; right?

6 A. Yes.

7 Q. It's across the road from PNM North  
8 facility?

9 A. Yes.

10 Q. So they're two separate facilities, but in  
11 the same property in Santa Fe?

12 A. Yes.

13 Q. And the South is a Level 5 facility?

14 A. Yes.

15 Q. And the North is a Level 6?

16 A. Yes.

17 Q. Okay. So did Mr. Silva come to your pod  
18 at PNM South and claim he was running the show?

19 A. Yes.

20 Q. And did he come after you got rid of  
21 Arturo Garcia, after he was removed from that pod?

22 A. Yeah. Yes.

23 Q. I want to talk to you a minute about  
24 Mr. Garcia, because you didn't like him, did you?

25 A. No, I didn't.

1 Q. And why didn't you like him?

2 A. We were always arguing over something  
3 stupid.

4 Q. Wasn't part of the reason you didn't like  
5 him because he was taking drugs from people and not  
6 paying for it?

7 A. One of the reasons.

8 Q. And it caused some anger among people that  
9 were in the pod; right?

10 A. Yes.

11 Q. And was there something that you did or  
12 that you did in connection with other people that  
13 were living with you to get Mr. Garcia removed from  
14 the pod?

15 A. No.

16 Q. Well, did you, quote, kite him out?

17 A. No.

18 Q. Do you know what "kite him out" means?

19 A. I know what that means.

20 Q. Tell me what that means, first of all.

21 A. To go and say somebody is going to get hit  
22 or something, send it through the mail to the STG or  
23 whatever, and they take action and take them out of  
24 there, whatever.

25 Q. So what kiting somebody out means, if you



1 want to get somebody removed from the housing  
2 unit --

3 A. Yes.

4 Q. -- you write a letter to the gang  
5 correctional officers?

6 A. Yes.

7 Q. And you tell them, "Hey, this guy's life  
8 is in danger"?

9 A. Yes.

10 Q. And whether it's in danger or not, the  
11 gang unit responds to that; right?

12 A. Right.

13 Q. And they remove the guy from the housing  
14 unit?

15 A. They question everybody, see if there is a  
16 problem.

17 Q. And then maybe the guy is removed from the  
18 housing unit?

19 A. Yes.

20 Q. So it's a way to try to manipulate the  
21 prison correctional officers, to get somebody out of  
22 your housing unit that you don't like.

23 A. Yeah, for some people.

24 Q. And that's known as kiting somebody out?

25 A. Yes.

1 Q. Now, you're saying you didn't kite  
2 Mr. Garcia out of the unit?

3 A. No.

4 Q. Did somebody else in your pod kite  
5 Mr. Garcia out of the unit?

6 A. I can't say, because people usually keep  
7 it undercover when they're doing things like that.  
8 But I'm pretty sure they did it.

9 Q. Were you interviewed by the FBI and the  
10 prosecutors in this case on August 22 of 2017?

11 A. Yes.

12 Q. Okay. That was the interview that you had  
13 with law enforcement after you were given an  
14 opportunity to visit with Lupe Urquizo; right?

15 A. Yes.

16 Q. And did you tell the investigator -- I  
17 guess it was Agent Acee -- or, no, Agent Neale and  
18 some of the other prosecutors and the other  
19 prosecutors that were there -- that Garcia was  
20 transferred after another inmate kited him out?

21 A. Like I said, I figured, you know what I  
22 mean, like, somebody is not going to come tell me,  
23 "Hey, I'm going to kite this guy out and you're  
24 going to tag team on it." They're not going to tell  
25 everybody, you know.

1 Q. So after Garcia left, Silva came in and  
2 claimed he was the new boss; right?

3 A. Yes, on the orders of Arturo Garcia.

4 Q. And how did that make you feel?

5 A. In danger.

6 Q. It made you feel in danger?

7 A. Yes.

8 Q. Did it eventually make you feel angry?

9 A. Yeah. There was a bit of feelings like  
10 that also.

11 Q. Did it make you feel angry because Silva  
12 came in and was bossing people around, acting like  
13 he had some sort of authority to run the show?

14 A. Yes.

15 Q. And you didn't recognize that authority,  
16 did you?

17 A. No.

18 Q. And the longer he pushed, the more angry  
19 you got?

20 A. Yes.

21 Q. And eventually you took enough of that and  
22 you decided, hey, I'm going to get this guy. And  
23 you attacked him.

24 A. That, and there's a lot of other elements  
25 to that, why. But that's one of the main reasons,

1 yes.

2 Q. Well, eventually, you attacked him at  
3 least in part because you were getting mad at him  
4 trying to push you around.

5 A. That's the main part, yes.

6 Q. So was your stabbing of Silva something  
7 that was sanctioned by the SNM?

8 A. No.

9 Q. All right. Was it something that was  
10 ordered by the SNM?

11 A. Not that one, no.

12 Q. And was it something that you did because  
13 you were somehow trying to improve your status  
14 within the SNM?

15 A. Yes. All for the cause, yes.

16 Q. Well, you're saying that now. But back  
17 when you were interviewed, right after -- about a  
18 week after the assault on Mr. Silva, you spoke to a  
19 guy named Cory Henn from the STIU unit; right?

20 A. After that happened?

21 Q. Yes.

22 A. Yes.

23 Q. And you told Mr. Henn that "I'm doing me,"  
24 didn't you?

25 A. Yes, I did.

1 Q. And you told him that the assault on Silva  
2 was your thing because you were mad at Silva.

3 A. I was required to.

4 Q. Now that's what you're saying.

5 A. No, then. Because you go and you talk to  
6 the STG about anything like that, and that's your  
7 life forfeit, you know what I mean? That's just how  
8 it is.

9 Q. Did you tell Mr. Henn that you assaulted  
10 Silva because you lost your temper?

11 A. Yeah.

12 Q. Now I want to ask you a couple of  
13 questions about Mauricio Varela's involvement in the  
14 assault on Silva. Okay? Mauricio Varela was a  
15 friend of yours; right?

16 A. Yes.

17 Q. And people knew that you guys were -- you  
18 hung out together and you were close?

19 A. Right.

20 Q. Right. So when you attacked Silva in the  
21 rec yard, was Silva with some other people that were  
22 considered his friends or his buddies?

23 A. Yes.

24 Q. And when you stabbed Silva, did one of  
25 Silva's friends shove Mauricio Varela?

1 A. Yes.

2 Q. So because you were attacking Silva, one  
3 of Silva's friends decided to get into it with  
4 Mauricio?

5 A. Yes.

6 Q. And he shoved Mauricio off of a walkway?

7 A. Right.

8 Q. And they were wrestling around on the  
9 ground.

10 A. Well, not him and the guy they pushed, no.

11 Q. I'm sorry, I'm not understanding your  
12 answer.

13 A. One guy pushed him, and he grabbed the  
14 other guy and fell over.

15 Q. And that's how Mauricio Varela got  
16 involved in the incident with Paul Silva?

17 A. Yes.

18 Q. That type of thing happens in prison;  
19 right?

20 A. Yes.

21 Q. Like if you decide to move on somebody,  
22 you can expect that person's friend to move on one  
23 of your friends?

24 A. Yes.

25 Q. That's just a common occurrence when there

1 is a physical altercation on the prison yard?

2 A. Yes.

3 Q. All right. I'm going to move to another  
4 topic. Okay?

5 I want to go back to your arrest in  
6 December of 2015. When you were -- well, did you  
7 fight your case from the time of that arrest up  
8 until August 22, when you met with Lupe Urquizo and  
9 then the FBI at the office in Albuquerque?

10 A. Yes.

11 Q. So you fought your case for almost two  
12 years?

13 A. Yes.

14 Q. And ultimately, after you had that August  
15 22 meeting in 2017 with Lupe and then the FBI, did  
16 you enter a plea of guilty?

17 A. Yes.

18 Q. And was that done on September 28 of 2017?

19 A. It might have been.

20 Q. And I think you told us last week you pled  
21 to two charges which gave you the potential of a  
22 maximum sentence of 30 years.

23 A. Yes.

24 Q. But you pled with the expectation that you  
25 would get a significant reduction in that sentence.

1 A. Yes.

2 Q. In exchange -- as one of the benefits for  
3 being a Government witness.

4 A. Yes.

5 Q. Now, during the almost two years that you  
6 fought the case, were you provided -- I think Ms.  
7 Fox-Young asked you some questions about this. Were  
8 you provided some of the materials that are known as  
9 discovery?

10 A. Yes.

11 Q. And can you just tell us briefly what  
12 kinds of materials those are, like what that  
13 consists of?

14 A. Just people making statements, people --  
15 discoveries of everybody's past, like...

16 Q. Criminal history?

17 A. Exactly. And just videos, video camera,  
18 action of situations and things like that,  
19 cellphones, phone calls, you know.

20 Q. So there were recordings, videos?

21 A. Yes.

22 Q. Some recorded statements?

23 A. Yes.

24 Q. Telephone calls that people made? All  
25 that stuff.



1 A. Yes.

2 Q. Okay. And would you agree with me, in  
3 addition to that, there were all sorts of law  
4 enforcement reports and other reports that were  
5 generated in connection with the case?

6 A. Yes.

7 Q. And let me go back a second. When you got  
8 the discovery, how did you get it? How did it come  
9 to you so you could read it and listen to it?

10 A. On the iPad, like on the pad, I guess, the  
11 Government --

12 Q. It came on what's called a computer  
13 tablet?

14 A. Yes.

15 Q. And is that something -- had you ever had  
16 a tablet like that before?

17 A. No, I didn't know how to use it, so I had  
18 to -- took a while.

19 Q. So you learned how to use it while you're  
20 sitting there in your jail cell?

21 A. Yes.

22 Q. And you were able to use it; right?

23 A. Yes, after a while.

24 Q. And you used it to listen to all the  
25 materials you were provided. Or a lot of them.

1 A. There is so much, there is no way to go  
2 through all of it. But yeah, I did some, yes.

3 Q. Now, on your tablet you were only charged  
4 in that one case regarding the assaults, on Mr.  
5 Silva; right?

6 A. Yes.

7 Q. On your tablet, did you get only the  
8 discovery materials related to the Silva assault, or  
9 did you get stuff related to all the cases the  
10 Government brought on December 3?

11 A. I got everything to everybody, yes.

12 Q. You got everything.

13 A. Everything to everybody's case that's on  
14 there, yes.

15 Q. So it wasn't limited to your case.

16 A. No.

17 Q. And you were free to go through materials  
18 that related to other people's cases.

19 A. Yes.

20 Q. And you could do that 24 hours a day,  
21 seven days a week, if you wanted to?

22 A. Yes.

23 Q. Is it fair to say that you looked at the  
24 materials that related to the homicide of Javier  
25 Molina, the thing that we're talking about here

1 today?

2 A. Yes, I did.

3 Q. And you listened to audios that were  
4 related to that case?

5 A. Some of them, yeah.

6 Q. And you looked at videos?

7 A. Yes.

8 Q. And you read witness statements related to  
9 that case?

10 A. Yes.

11 Q. Even though -- okay. And as you did that,  
12 did you become aware that it was the Government's  
13 claim or the Government's theory that somehow  
14 paperwork must have been transferred from the  
15 Penitentiary of New Mexico down to Southern New  
16 Mexico Correctional Facility shortly before the  
17 homicide?

18 MR. BECK: Objection, hearsay, Your Honor.

19 MS. JACKS: I'm asking about his state of  
20 mind.

21 THE COURT: Overruled.

22 A. Repeat the question.

23 BY MS. JACKS:

24 Q. Yeah, I'm asking, based on your review  
25 that you conducted on these materials about the

1 Molina homicide --

2 A. Yes.

3 Q. -- did you become aware that the  
4 Government was trying to claim that some paperwork  
5 came down just before Molina was killed?

6 A. I knew that because I took it.

7 Q. Well, you're saying you took it.

8 A. I knew that on there, too. I seen it,  
9 yes.

10 Q. So you knew that was something the  
11 Government was interested in.

12 A. Yes.

13 Q. I'm going to pause here a second because I  
14 want to talk to you a little bit about how you made  
15 the decision to become a Government witness.

16 A. Okay.

17 Q. And I guess really what we're focusing on  
18 is that meeting with Lupe Urquizo on August 22 of  
19 2017; right?

20 A. Okay, yes.

21 Q. And you were brought down to the FBI  
22 office in Albuquerque on that date?

23 A. Yes.

24 Q. And you told us that you met with Lupe  
25 before you met with the Government agents?

1 A. Yes.

2 Q. Now, at that time -- so in August of  
3 2017 -- what was your relationship with Lupe  
4 Urquizo?

5 A. He's a good friend of mine from back from  
6 my hometown.

7 Q. So was he a close friend?

8 A. Pretty close, yes.

9 Q. One of the people in -- one of the people  
10 that you know that you're closest to?

11 A. Yes.

12 Q. And I think you told us last week about a  
13 fight that you had with some correctional officers.  
14 I guess you had a few. It's the one where I think  
15 you sprayed some feces on a female guard who was  
16 giving you attitude?

17 A. It was for him, because of him.

18 Q. I just want to be clear about that. Was  
19 that a fight that you got into to defend Lupe  
20 Urquizo's honor?

21 A. No. To defend the S's honor, yes.

22 Q. And was it a fight that you got involved  
23 with because of your relationship with Lupe Urquizo  
24 specifically?

25 A. That and because he's a brother.

1 Q. And had Mr. Urquizo also represented you  
2 in disciplinary hearings within the prison system in  
3 the past?

4 A. I think one.

5 Q. So he was someone that you had come to  
6 rely on. Is that fair to say?

7 A. Yes.

8 Q. Now, when you met with him in the FBI  
9 office, were there any FBI agents present in the  
10 room, or were you guys allowed to talk with each  
11 other without law enforcement present?

12 A. No, our lawyers were in there.

13 Q. But your lawyers aren't law enforcement;  
14 right? They're representing you.

15 A. No, they were standing outside the door.

16 Q. Just so I'm clear, law enforcement was  
17 outside the door?

18 A. Yes.

19 Q. But they weren't inside the room  
20 participating in the conversation.

21 A. No.

22 Q. And during that meeting, did Lupe tell  
23 you, "Look, this is your opportunity to avoid being  
24 charged with a case that carries a life sentence"?

25 A. Yeah, he said it would help. It would

1 help, you know.

2 Q. Did he tell you you were going to be faced  
3 with a choice where you were going to either have to  
4 be a witness for the Government or a defendant in a  
5 case where you could get life imprisonment?

6 A. I was already facing that, so it wasn't  
7 really...

8 Q. Well, you weren't facing life.

9 A. Not that, you know.

10 Q. Let's just be clear. The assault on Mr.  
11 Silva --

12 A. Yes.

13 Q. -- and the conspiracy to murder Mr.  
14 Silva -- that case didn't carry a sentence of life,  
15 did it?

16 A. After 30 years, it might as well be 150.

17 Q. But we want to give the jury -- at least I  
18 want to give the jury the correct information. What  
19 you're saying is: 30 years may as well be life to  
20 you?

21 A. I'll be 80-some years old. Who wants to  
22 get out at that age?

23 Q. But you would agree with me that 30 years  
24 is not a life sentence?

25 A. It is to some.

1 Q. So Urquizo told you, "Look. This is your  
2 opportunity and if you become a Government witness,  
3 you're going to get some benefit in terms of your  
4 case."

5 A. Yes.

6 Q. And in terms of not being charged with a  
7 new case, the murder of Javier Molina.

8 A. No.

9 Q. He didn't say that?

10 A. No. He didn't talk about that.

11 Q. Did Mr. Urquizo tell you about other  
12 benefits that the Government was willing to provide  
13 if you signed up as a witness, like money, or  
14 increased privileges, or family visits?

15 A. Privileges and visits. He didn't mention  
16 money, no.

17 Q. But he mentioned that you would have  
18 better living conditions if you signed up to be a  
19 Government witness?

20 A. Yes. It depends where I went, he said.  
21 He said -- what he said is, "It's good over there  
22 where I'm at. You should try to ask them to put you  
23 over there. I got my TV." Yeah, there was real  
24 benefits.

25 Q. So he was pleased with the benefits that



1 he had received, and he thought you would be  
2 similarly pleased?

3 A. Not all the way. We're still in a box,  
4 you know, so...

5 Q. But my point is that what Mr. Urquizo was  
6 telling you was that "If you sign up -- I'm getting  
7 some stuff and you would want the stuff I'm getting,  
8 so you should sign up."

9 A. Yeah, I guess, in a way.

10 Q. Did he tell you in that meeting that he  
11 had told the Government that he was the person who  
12 carried the paperwork from the Penitentiary of New  
13 Mexico to Southern New Mexico Correctional Facility?

14 A. I already knew that, because I'm the one  
15 that gave it to him.

16 Q. Did he tell you in that meeting that he  
17 told that to the Government, is my question.

18 A. I think he might have mentioned that.

19 Q. Okay. And did he also tell you that he  
20 told the Government that you're the one who gave it  
21 to him?

22 A. Yes, he probably mentioned that.

23 Q. After that meeting with Lupe Urquizo, did  
24 you make a decision in your mind, All right, I'm  
25 going to be a Government witness; I'm going to be a

1 witness and not a defendant?

2 A. Yeah, probably around that time. I think  
3 I had decided before that, you know.

4 Q. But that sealed the deal, the conversation  
5 with Mr. Urquizo?

6 A. I was already on the way out. It was just  
7 like a surprise stop there, you know. He was  
8 already there when he got there, so I wouldn't be  
9 taking that ride in the first place if I hadn't  
10 decided something, you know.

11 Q. Okay. Well, did it make you, I guess,  
12 feel more comfortable with the decision?

13 A. There you go.

14 Q. And more enthusiastic about moving  
15 forward?

16 A. Yeah. That would be the word.

17 Q. Now, I want to talk to you about this  
18 testimony you gave last week about getting the  
19 paperwork from Cheech.

20 A. Right.

21 Q. Okay? So what you say -- what you told us  
22 last week, what you claimed last week was that  
23 Cheech gave you some paperwork on Molina; right?

24 A. Right.

25 Q. And you claim that you took that from PNM

1 North facility to PNM South facility.

2 A. Yes.

3 Q. And that you ultimately gave it to Mr.  
4 Urquizo.

5 A. Yes.

6 Q. Now, I just want to go back and talk a  
7 little bit about Cheech. Do you know who Cheech is,  
8 his real name?

9 A. I don't know his real name. I'm thinking  
10 Martinez is his last name, but I'm not sure. I've  
11 known him all his life as Cheech.

12 MS. JACKS: Your Honor, I have a one-page  
13 document, Bates No. 14077, that purports to have a  
14 picture on it of an individual identified as Joe Pat  
15 Martinez. I'd like to just have this marked to show  
16 the witness as the defense next in order.

17 THE COURT: What do you want it marked as?

18 MS. JACKS: I'm told our next is EP. E as  
19 in emergency, P as in Paul. May I approach?

20 THE COURT: You may.

21 A. Yeah.

22 BY MS. JACKS:

23 Q. Do you want to look any further?

24 A. I know that's him.

25 Q. So showing you this picture, is that the

1 person that you know as Cheech?

2 A. Yes.

3 Q. And is his name Joe Pat Martinez?

4 A. Yeah, I guess that's his name. I don't  
5 know. Like I said, I have known him by Cheech all  
6 his life.

7 Q. And you recognize him from this picture on  
8 this piece of paper, Exhibit EP?

9 A. Yes.

10 Q. Were you ever housed in the same housing  
11 pod as Cheech?

12 A. No. He was always in the next pod.

13 Q. And I think you told us last week that he  
14 passed -- you're saying he passed you paperwork when  
15 you were both housed in unit 1-B at PNM North?

16 A. Yes.

17 Q. And is that -- did unit 1-B have  
18 recreation at the same time?

19 A. Yes. We would go out with other pods.  
20 Sometimes it would reach to certain pods. This one  
21 whole pod and half of the next one, or something  
22 like that.

23 Q. How many pods were in unit 1-B at that  
24 point?

25 A. I think there was four.

1 Q. So sometimes you would recreate with  
2 people from other housing pods in that same unit  
3 1-B?

4 A. Yes.

5 Q. So that's how you're saying you had this  
6 contact with Cheech?

7 A. Yes.

8 Q. All right. And when Ms. Duncan was asking  
9 you questions last week, I think she asked you  
10 how -- when was this supposed transfer of paperwork  
11 in relation to you getting out of the PNM North and  
12 heading to the South. Do you recall those  
13 questions?

14 A. That was, like, right before -- like I  
15 said, I'm bad with dates. But I know it was within  
16 three months, four months, within that time before I  
17 left back to the South.

18 Q. Okay. And I think on Friday you said four  
19 to five. So the bottom line is: It was fairly  
20 shortly before you got transferred to the South that  
21 you're saying this happened?

22 A. Yes.

23 Q. And at the time that you say Cheech gave  
24 you this paperwork, did you know that you were going  
25 to be transferred out of PNM North to the South?

1 A. I figured I was close because I was  
2 fighting it to come back out, yes.

3 Q. So was that part of the reason you're  
4 claiming that Cheech had this reason to give you the  
5 paperwork, because he knew you were going to be  
6 moved?

7 A. Yes.

8 Q. And I just want to put some -- I want to  
9 try to understand the timeframe when you ended up in  
10 unit 1-B. And I think you might have been asked  
11 those questions last week by Mr. Beck. Did you go  
12 to PNM North, unit 1-B, after the attack on Paul  
13 Silva?

14 A. Yes.

15 Q. Or within a few weeks after the attack on  
16 Paul Silva?

17 A. Yes.

18 Q. And Mr. Silva -- what was the date that  
19 you attacked Mr. Silva?

20 A. I think it might have been March, sometime  
21 in March, maybe the 15th. I'm not sure.

22 Q. March 14, 2011?

23 A. That might be.

24 Q. Does that sound right?

25 A. Sounds right, Yes.

1 Q. Then the next day you went to PNM North?

2 A. Yes.

3 Q. And sometime shortly after that, you were  
4 assigned to unit 1-B?

5 A. Yes.

6 Q. Do you remember the date that you were  
7 transferred from PNM North to the South? When you  
8 got out of PNM North?

9 A. I don't remember the date, Miss.

10 Q. Okay. Was it a few weeks before the  
11 Molina homicide?

12 A. No, I think it was that week.

13 Q. Was it in 2014 sometime?

14 A. When I took the paperwork; right?

15 Q. When you got transferred from PNM North to  
16 PNM South.

17 A. It might have been, yes.

18 Q. Does the New Mexico Department of  
19 Corrections keep records about where you were housed  
20 when and where you're transferred?

21 A. Yes.

22 Q. Have you seen those records?

23 A. No.

24 Q. Do you think if you looked at those  
25 records, that might help refresh your memory as to

1 when you were moved around to various places?

2 A. Like I said, I'm doing bad. I can't keep  
3 up with the dates. I never kept track of that  
4 because the time drags, so I just...

5 Q. So my question is -- I happen to have  
6 those records.

7 A. Okay.

8 Q. Do you think if you looked at them, that  
9 might help you be more accurate in court --

10 A. Maybe.

11 Q. -- and refresh your memory about when you  
12 were moved?

13 A. Yeah, maybe.

14 MS. JACKS: Your Honor, I'd like to  
15 approach and show the witness a document previously  
16 marked V6. And I'm not intending to publish it to  
17 the jury at this time.

18 THE COURT: V?

19 MS. JACKS: V as in Victor. May I  
20 approach?

21 THE COURT: You may.

22 BY MS. JACKS:

23 Q. I'm going to put this --

24 A. Where are we talking about?

25 Q. Give me a second, Mr. Calbert. I'm going



1 to help you. I know that's a lengthy document. So  
2 first of all, let's take a look at this document and  
3 I just want you to take a look at the entry for  
4 March 15, 2011. And that's about halfway down the  
5 first page.

6 A. Okay.

7 Q. Just tell me when you have found it.

8 A. All right. I've got it.

9 Q. Okay. So does that refresh -- can you  
10 look up to me for a second? Does that refresh your  
11 memory as to when you were transferred to PNM North  
12 after the assault on Paul Silva?

13 A. Okay. Yeah.

14 Q. And was that March 15, 2011?

15 A. Yes.

16 Q. Let's go up the page and look at the  
17 entries to February 13, 2014. Don't tell me what  
18 they say, but just take a look at them. You're  
19 going to go up the page. Do you want me to come and  
20 point it out to you?

21 A. Yeah. Would you?

22 Q. Yeah, sure. It's hard if you don't have a  
23 finger to --

24 A. Yeah, I can't.

25 Q. So look -- I'm just going to mark a little

1 star by it.

2 A. All right.

3 Q. Have you had a chance to look at that?

4 A. Yes.

5 Q. All right. So does that refresh your  
6 memory as to when you got out of the PNM North and  
7 went back to the South?

8 A. Yes.

9 Q. And did that happen on February 13 of  
10 2014?

11 A. Yes.

12 Q. Okay. And can you look at the entry just  
13 below those entries that I just marked?

14 A. Okay.

15 Q. And does that refresh your memory that  
16 just prior to your transfer from PNM North to PNM  
17 South on February 13 of 2014, you were housed in the  
18 North unit 1-B?

19 A. Yes.

20 Q. And were you housed there from May 2 of  
21 2013 to February 13 of 2014?

22 A. Yes.

23 Q. Okay. So if you got the paperwork, like  
24 you've told us, from Cheech about four to five -- or  
25 three, four, five months before you were transferred

1 back to the South facility, is that when that  
2 transfer would have had to happen?

3 A. I'd say within that time.

4 Q. Okay. So within that time period.  
5 Between -- sometime between May 2 of 2013 and when  
6 you were transferred to the South on February 13 of  
7 2014?

8 A. Yeah -- no, you're going to get me with  
9 the dates, you know.

10 Q. Well, the purpose of showing you those  
11 records was to see if that refreshed your memory as  
12 to the dates.

13 A. I guess it don't. You're going to get me  
14 with the dates. You know what I mean? Like I said.

15 Q. So I want to talk to you specifically  
16 about this conversation you said you had with Cheech  
17 when he supposedly gave you the paperwork. Okay?

18 A. Okay.

19 Q. I think what you told us last week is you  
20 were out in a recreation cage and he was in the cage  
21 next to you.

22 A. He was walking by.

23 Q. He was walking by your cage on the way to  
24 his?

25 A. Yeah, coming outside.

1 Q. Was he being escorted by correctional  
2 officers?

3 A. Yes.

4 Q. And so according to your story, the  
5 correctional officers paused and let him converse  
6 with you?

7 A. No, he just stopped and slid the paper  
8 through the hole like that.

9 Q. And I think what you told us last week,  
10 that based on your story, the paper was rolled up  
11 kind of like a straw?

12 A. It was wrapped up in his hand, rolled up,  
13 because he's handcuffed in the back, so he can't  
14 just carry it regularly so...

15 Q. So are you saying it was rolled  
16 lengthwise, so it was long and thin?

17 A. Not thin enough to stick through the  
18 little holes, but thin enough to stick through the  
19 slot by the door.

20 Q. And it was cylindrical, according to your  
21 story.

22 A. Yes.

23 Q. And if you -- well, correct me if I'm  
24 wrong. I think you told us last week that it was a  
25 single page of paper?

1           A.     There was two of them. I'm pretty sure  
2 there was two.

3           Q.     Now you're saying there was two?

4           A.     I'm pretty sure there was two.

5           Q.     Did you tell us on Friday that it was one  
6 page?

7           A.     I don't remember that.

8           Q.     And initially, did you agree to transfer  
9 the paperwork?

10          A.     At first, no. And then after a while, I  
11 said yes.

12          Q.     So how long did you stand there? How long  
13 do you claim you stood there and talked with Cheech?

14          A.     To the hour. It was an hour yard, so...

15          Q.     Okay. So maybe -- so according to what  
16 you're telling us, you're claiming he stuck the  
17 paperwork through the cage and then somehow you had  
18 a chance to talk to him after that?

19          A.     Yes.

20          Q.     Because he was in the neighboring cage.

21          A.     Yes.

22          Q.     And initially you told him, "I'm not doing  
23 that"; right?

24          A.     Yeah, because I said, "This ain't really  
25 nothing, you know? I don't want to start any

1 trouble. You know what I mean? For something so  
2 small."

3 Q. Okay. So in an effort to convince you  
4 that you needed to take this paperwork, Cheech  
5 dropped Mr. Baca's name, didn't he?

6 A. Yes.

7 Q. You don't know if that was -- if Baca had  
8 really told Cheech to do anything, do you?

9 A. No.

10 Q. It was just an effort by Cheech to get you  
11 to do what he wanted you to do.

12 A. Could have been.

13 Q. According to your testimony, did you  
14 unroll the paperwork and read it there while you  
15 were in the rec cage next to Cheech?

16 A. Yes, I just real quick glanced over.

17 Q. And you're saying you took it back to your  
18 cell; right?

19 A. Yes.

20 Q. And you had it for some period of time  
21 before you got transferred to PNM South, didn't you?

22 A. Yes.

23 Q. So you read it, didn't you?

24 A. Yes, I read it.

25 Q. You looked at it?

1 A. Yes.

2 Q. And I want to ask you some questions about  
3 what the paperwork supposedly looked like. Was it  
4 typed? Printed? Handwritten?

5 A. It was typed.

6 Q. And was it on -- was it on a blank sheet  
7 of paper, just like a white sheet of paper, or was  
8 it on paper that had lines or some sort of type of  
9 form?

10 A. Yeah, like a piece of Government paper,  
11 you know what I mean? Like typed, you know.

12 Q. It was typed, but I want to talk about --

13 A. A police report. Like a police report.

14 Q. So was it -- did you see, like, a stamp of  
15 a police agency on it, or a logo somewhere on the  
16 paper?

17 A. I'm pretty sure there was a stamp at the  
18 end or where some signature was, but --

19 Q. There was a stamp or a signature at the  
20 end?

21 A. It was a signature with a stamp at the  
22 end, but I couldn't remember exactly what it was.

23 Q. Do you know what kind of signature? Was  
24 it supposedly Mr. Molina's signature or a police  
25 officer's signature or --

1 A. I can't remember.

2 Q. What color was the printing? Was it all  
3 black and white, or was there color?

4 A. Black and white, and then I think at the  
5 end there was some blue, maybe red at the end. I'm  
6 not sure.

7 Q. So you recall seeing black and white and  
8 blue and red on the paper?

9 A. Yeah, on the stamp.

10 Q. According to you?

11 A. Yeah.

12 Q. And what sort of information was contained  
13 in the paperwork about the crime that Mr. Molina had  
14 been involved in? Anything?

15 A. Yes, it just said that he was parked in  
16 the Audi, and they went and robbed some lady and  
17 robbed purses. And I can't remember word for word,  
18 but that's about -- something like that.

19 Q. Have you said in the past that it  
20 described a purse-snatching?

21 A. Some kind of robbery, yeah.

22 Q. My question is: Have you said in the past  
23 that it was a purse-snatching?

24 A. Yes.

25 Q. So what does a purse-snatching mean to



1 you?

2 A. I guess a robbery or strong-arm robbery,  
3 I'm not sure.

4 Q. So a strong-armed robbery is -- a robbery  
5 is taking property from somebody by force or fear;  
6 right?

7 A. Yes.

8 Q. So a strong-armed robbery would be a  
9 robbery where you don't use a weapon; you just use  
10 pure physical force?

11 A. I can't say it wasn't with a weapon or  
12 not. I can't remember that. It's been a long time.

13 Q. When you say purse-snatching and  
14 strong-armed robbery, does that mean to you that  
15 somebody goes by where a lady is carrying a purse  
16 and jerks it off her shoulder?

17 A. I'm not saying that's what it was. I'm  
18 saying that's what it came back with, that they said  
19 it came back with purses and I don't know what else.

20 Q. And according to your story, what was it  
21 or who was it that Molina supposedly said something  
22 to?

23 A. I guess it was law enforcement, when they  
24 went and arrested him.

25 Q. Well, what did the paperwork that you say

1 you saw say?

2 A. Like I said, I can't remember word for  
3 word. Just -- what I told you is all I remember.

4 Q. Can you remember anything about what he  
5 supposedly said that was supposedly reflected on  
6 this paperwork?

7 A. He was saying what everybody's part was in  
8 that robbery. He just said that he stayed in the  
9 car; he was the one driving.

10 Q. And who did he supposedly say that to,  
11 according to this paperwork that you said you read?

12 A. To who or about?

13 Q. To whom?

14 A. I guess a police officer, I guess.

15 Q. I'm not asking you to guess. I'm  
16 asking --

17 A. I don't know. I would have to guess, if  
18 that was the question.

19 Q. I'm asking you what the paperwork that you  
20 say you saw said.

21 A. I just finished telling you.

22 Q. You don't know.

23 A. No. I told you what I know. That's what I  
24 remember.

25 Q. All right.

1 MS. JACKS: Your Honor, I have four  
2 certified copies of judgment, sentence, and  
3 commitment for Mr. Calbert, and I'd just ask that  
4 those be marked and entered at this time.

5 THE COURT: All right. Give me the  
6 numbers for them.

7 MS. JACKS: It's AC, as in Apple Charley,  
8 1 through 4. And the first one is from March 25,  
9 1998; the second one is December 3, 1999; the third  
10 one is January 11, 2006; and the last one, number 4,  
11 is November 2, 2007.

12 THE COURT: Any objection, Mr. Beck?

13 MR. BECK: No objection.

14 THE COURT: Any objection from any  
15 defendant?

16 MS. BHALLA: No, Your Honor.

17 THE COURT: Hearing none, Defendants'  
18 Exhibits AC1, AC2, AC3, and AC4 will be admitted  
19 into evidence.

20 (Defendants' Exhibits AC1, AC2, AC3, and  
21 AC4 admitted.)

22 MS. JACKS: Thank you. I have nothing  
23 further.

24 THE COURT: Thank you, Ms. Jacks.

25 Ms. Bhalla, do you have some questions?

1 MS. BHALLA: I do, Your Honor.

2 THE COURT: Certainly.

3 CROSS-EXAMINATION

4 BY MS. BHALLA:

5 Q. Mr. Calbert, you testified a little bit  
6 about the transfer of the paperwork at PNM North,  
7 and I had a couple of other questions for you about  
8 that.

9 Last week -- I believe it was on Friday --  
10 you mentioned when you were housed at PNM North, you  
11 had a three-guard escort; is that correct?

12 A. Yes.

13 Q. And that was because of all the assaults  
14 that you had with COs; is that correct?

15 A. Yes.

16 Q. And so is it fair to say that you were  
17 supervised fairly closely when you were at PNM?

18 A. No. At times.

19 Q. Yeah. Well, it's the most secure prison  
20 system that you can go to, right, in New Mexico?  
21 It's Level 6?

22 A. Yeah. A lot of things happen there, so I  
23 guess you could call it that, I guess.

24 Q. Okay. And when Cheech was brought out --  
25 I just want to make sure I understand this -- he was

1 cuffed behind?

2 A. Yes.

3 Q. So he was walking this way?

4 A. Yes, this way past me.

5 Q. Past you? How many guards were with him?

6 A. One.

7 Q. How many guards are out in the recreation  
8 area? Ten, twenty, thirty?

9 A. None.

10 Q. None?

11 A. That one taking him. They just changed to  
12 two guards now. Now that things have been  
13 happening, they finally changed the policy to have  
14 two COs for everything.

15 Q. Okay. But when he was walking with  
16 Cheech, Cheech was cuffed behind his back?

17 A. Yes.

18 Q. And there was a CO walking with him?

19 A. Yes.

20 Q. And it's your testimony that, like this,  
21 with a CO with him --

22 A. Yes.

23 Q. -- he passed the paperwork to you through  
24 the fence?

25 A. There you go. Yes.

1 Q. And nobody did anything about that?

2 A. No.

3 MS. BHALLA: Nothing further, Your Honor.

4 Thank you.

5 THE COURT: Thank you, Ms. Bhalla.

6 Mr. Beck, do you have redirect of Mr.

7 Calbert?

8 MR. BECK: Yes, Your Honor.

9 THE COURT: Mr. Beck.

10 REDIRECT EXAMINATION

11 BY MR. BECK:

12 Q. Mr. Calbert, I'm showing you the addendum  
13 to your plea agreement. Do you remember when we  
14 talked about that on Friday?

15 A. Yes.

16 Q. And in paragraph 2, what does that  
17 paragraph say to you? What does it mean to you?

18 A. That I have to say -- talk truthful and  
19 the truth.

20 Q. What happens if you don't talk truthfully  
21 and say the truth?

22 A. Then everything is off, you know. I don't  
23 get no benefits from nothing, you know.

24 Q. Does that include the plea agreement that  
25 you pled guilty to, for which you faced only 30

1 years?

2 A. Yes.

3 Q. Does that mean that we can go back, the  
4 Government can go back and charge you with the  
5 Molina murder if you don't testify truthfully?

6 A. Yes.

7 Q. On August 22, 2017, when you came to the  
8 FBI in Albuquerque, had you already decided to  
9 cooperate?

10 A. Yes.

11 Q. Did you ask to meet with Lupe Urquizo?

12 A. I didn't, no. But he was there, so he  
13 asked.

14 Q. And when you talked to him about this  
15 case, did you find out he told us the truth?

16 A. Yes.

17 Q. Did that include that you passed the  
18 paperwork to him?

19 MS. FOX-YOUNG: Your Honor, objection,  
20 leading. It's been leading for a little while.

21 A. Yes.

22 THE COURT: Overruled.

23 BY MR. BECK:

24 Q. Sorry. Did that include that you passed  
25 the paperwork to him?

1 A. Yes.

2 Q. Now, I think you talked a little bit about  
3 cooperation. Is cooperation what you're doing now?

4 A. Yes.

5 Q. What are you doing now?

6 A. I'm testifying.

7 Q. And what's the punishment in SNM for  
8 cooperating?

9 A. It's death.

10 Q. I think you talked with -- talked here on  
11 cross-examination about Mr. Perez talking about  
12 providing his walker. Did he talk about this to  
13 you? Did he talk about the case only once, or did  
14 he talk about the case multiple times while you were  
15 together?

16 MS. JACKS: Your Honor, I request a  
17 limiting instruction.

18 THE COURT: All right. This evidence that  
19 Mr. Beck is about to elicit can only be used against  
20 Mr. Perez. It cannot be used against any of the  
21 other three gentlemen in the courtroom, the other  
22 defendants.

23 All right, Mr. Beck.

24 BY MR. BECK:

25 Q. Did Mr. Perez talk about this case only



1 once, or did he talk about it multiple times?

2 A. Every time he was in the shower, every  
3 time he got around people. Couldn't shut him up.

4 Q. I think with Ms. Jacks you were talking  
5 about the Paul Silva assault that you pled guilty  
6 to. Do you remember that?

7 A. Yes.

8 Q. When you told Corey Henn that you did it  
9 only for personal reasons, why did you tell him  
10 that?

11 A. Because I was required to; because you  
12 don't talk to law enforcement. If they find out, it  
13 comes out on paper, and they'll kill you.

14 Q. Who required you to, and who would kill  
15 you?

16 A. Just SNM in general.

17 Q. With the SNM, were COs extremely strict  
18 with y'all as the SNM, or were they a little bit  
19 more permissive with you all as the SNM?

20 A. Depends who we were dealing with.

21 Q. Were they scared of you?

22 A. Yes.

23 MS. DUNCAN: Objection, Your Honor. Calls  
24 for speculation.

25 THE COURT: Well, if he knows.

1 BY MR. BECK:

2 Q. Do you know whether they were scared of  
3 you?

4 A. Yes.

5 Q. Were they scared of you?

6 A. Yes.

7 MS. DUNCAN: Your Honor, I don't know how  
8 he knows. Objection, and ask it be struck.

9 THE COURT: Lay a foundation how he knows  
10 that.

11 BY MR. BECK:

12 Q. How do you know?

13 A. He just said, dangerous --

14 MS. DUNCAN: Your Honor, I --

15 THE COURT: Sustained.

16 MS. JACKS: Move to strike the previous  
17 answer.

18 THE COURT: I'll strike the previous  
19 answer.

20 BY MR. BECK:

21 Q. In your interactions with COs, do you  
22 believe they're afraid of you, not from what they  
23 said; just from what they did.

24 MS. DUNCAN: Your Honor, I'm going to  
25 object.

1 THE COURT: If he can say what they did,  
2 only from what they did, not what he was told, he  
3 can answer.

4 But why don't you lay a foundation that  
5 he's going to testify just from his knowledge of  
6 what they said?

7 BY MR. BECK:

8 Q. You said that -- I think earlier you said  
9 you were escorted by three COs when you walked out  
10 to the yard; is that right?

11 A. Yes.

12 Q. Did you observe how COs interacted and  
13 acted with non-SNM inmates?

14 A. Yes.

15 Q. Did they act differently when they were  
16 around you?

17 A. Yes.

18 Q. Did they act differently when they were  
19 around the SNM?

20 A. Yes.

21 Q. How did they act differently?

22 A. They were just real scared. They just  
23 didn't talk back. They would talk to other inmates,  
24 but they wouldn't say things and do things with all  
25 of us, you know what I mean, like they do with all

1 the other inmates.

2 Q. Does this include when they walked SNM  
3 members out to the yard?

4 A. Yes.

5 Q. Mr. Calbert, if you know, what is Spider  
6 in Spanish?

7 A. La araña.

8 MR. BECK: May I have a moment, Your  
9 Honor?

10 THE COURT: You may.

11 MR. BECK: Nothing further, Your Honor.

12 Thank you, Mr. Calbert.

13 THE COURT: Thank you, Mr. Beck.

14 Do you have something, Ms. Duncan?

15 MS. DUNCAN: I do, Your Honor, if I could  
16 just have a moment.

17 THE COURT: Ms. Duncan.

18 RECROSS-EXAMINATION

19 BY MS. DUNCAN:

20 Q. Mr. Calbert, you testified that  
21 correctional officers were afraid of you; correct?

22 A. Yes.

23 Q. And that there were three-men escorts to  
24 move you around PNM North; correct?

25 A. Sometimes.

1 Q. And you repeatedly stabbed two  
2 correctional officers; right?

3 A. Yes.

4 Q. And you threw feces at another  
5 correctional officer?

6 A. Yes.

7 MS. DUNCAN: Thank you. I have no further  
8 questions.

9 THE COURT: Thank you, Ms. Duncan.

10 Mr. Beck, anything further?

11 MR. BECK: Nothing further, Your Honor.

12 THE COURT: Mr. Calbert, you may step  
13 down.

14 MS. FOX-YOUNG: Your Honor, we'd like to  
15 reserve this witness.

16 THE COURT: All right. You'll remain  
17 outside of the courtroom, but you are subject to  
18 re-call. Thank you for your testimony.

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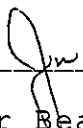
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2 STATE OF NEW MEXICO

3  
4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,  
6 Official Court Reporter for the State of New Mexico,  
7 do hereby certify that the foregoing pages  
8 constitute a true transcript of proceedings had  
9 before the said Court, held in the District of New  
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my  
12 hand on this 12th day of March, 2018.

13  
14   
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